H.R. 7, THE "COMMUNITY SOLUTIONS ACT OF 2001"

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

AND

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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H.R. 7, THE "COMMUNITY SOLUTIONS ACT OF 2001"

TUESDAY, JUNE 14, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
SUBCOMMITTEE ON SELECT REVENUE MEASURES,
Washington, DC.

The Subcommittees met, pursuant to notice, at 10:05 a.m., in room 1100 Longworth House Office Building, Hon. Wally Herger (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES
SUBCOMMITTEE ON SELECT REVENUE MEASURES

FOR IMMEDIATE RELEASE
June 7, 2001
No. HR–6

CONTACT: (202) 225–1025

Herger and McCrery Announce Joint Hearing on H.R. 7, the "Community Solutions Act of 2001"

Congressman Wally Herger (R–CA), Chairman of the Subcommittee on Human Resources, and Congressman Jim McCrery (R–LA), Chairman of the Subcommittee on Select Revenue Measures, Committee on Ways and Means, today announced that the Subcommittees will hold a joint hearing on H.R. 7, the "Community Solutions Act of 2001." **The hearing will take place on Thursday, June 14, 2001, in the main Committee room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include Members of Congress, social service program administrators, representatives of faith-based organizations, academics, and other experts in charitable giving and government efforts to spur greater individual and community involvement in aiding the needy. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

On March 29, 2001, Representatives J.C. Watts (R–OK) and Tony Hall (D–OH), along with Speaker Dennis Hastert (R–IL), introduced H.R. 7, the "Community Solutions Act of 2001." Key features of this legislation are designed to provide incentives for charitable contributions by individuals and businesses, to improve the effectiveness and efficiency of various social services to individuals and families in need, and to enhance the ability of low-income Americans to gain financial security by building assets.

Within the jurisdiction of the Subcommittee on Select Revenue Measures, H.R. 7 includes several tax-related proposals, including measures to provide a charitable contribution deduction for non-itemizers, to permit tax-free withdrawals form individual retirement accounts (IRAs) for charitable contributions, to liberalize the restrictions on the donation of food inventory, and to create individual development accounts.

Within the jurisdiction of the Subcommittee on Human Resources, Title II of H.R. 7 provides for enhanced opportunities for faith-based organizations to provide various social services. H.R. 7 builds on provisions first enacted in the 1996 welfare reform law that prohibited States from discriminating against faith-based organizations seeking to provide services using Temporary Assistance for Needy Families funds. Since 1996 similar "charitable choice" provisions have been added to Welfare-to-Work, community service, and substance abuse programs.

In announcing the hearing, Chairman Herger stated: "I commend the President, along with Representatives Watts and Hall and Speaker Hastert, for tapping the power of the faith-based community to help needy Americans. That was our goal in the welfare reform charitable choice provision. I am eager to learn more about their proposals in H.R. 7 to add new choices and services to help the needy."

Chairman McCrery added: "In every community, there are countless examples of how charities help fulfill unmet needs. Congress needs to examine new ways to encourage Americans to help charities help communities. I look forward to examining the proposals in H.R. 7 which encourage more charitable giving."

FOCUS OF THE HEARING:

The focus of the hearing is to review H.R. 7, the "Community Solutions Act of 2001."

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should *submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, with their name, address, and hearing date noted on a label*, by the close of business, Tuesday, June 19, 2001, to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Human Resources office, room B–317 Rayburn House Office Building, by close of business the day before the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette WordPerfect or MS Word format, typed in single space and may not exceed a total of 10 pages including attachments. **Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.**
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.
4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at "http://waysandmeans.house.gov".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman HERGER. The Committee will come to order.

I welcome all of our witnesses and guests to today's joint hearing on H.R. 7, the Community Solutions Act of 2001.

It is a pleasure to be here today with colleagues from the Subcommittee on Select Revenue Measures and to have so many of our colleagues from both sides of the aisle with us to testify.

I am interested in all of the issues raised by H.R. 7, including those designed to increase charitable giving and encourage more savings by low-income families.

Those are all important goals, which public policy can and should promote.

As Chairman of the Human Resources Subcommittee, I also look forward to testimony addressing what is often called "charitable choice." Charitable choice refers to changes made under the welfare reform and subsequent laws designed to permit more involvement by churches, synagogues, mosques, and others in the faith-based community to help Americans in need.

We will hear today about what services are being offered and what the effect would be of expanding those services as H.R. 7 proposes.

I trust we also will hear a number of concerns about separation of church and State and whether there are adequate protections built into the legislation. I share these concerns because I value the tradition of religious freedom that our country has enjoyed.

We all have an interest in getting this right. For example, we provided a number of protections in the original charitable choice language in the 1996 welfare reform law. We are also eager to learn whether those protections are working as intended, which is an important concern as we consider further steps.

To help us answer such questions, we have an impressive list of witnesses, including the co-authors of H.R. 7, Representatives J.C. Watts and Tony Hall. Their support for this legislation proves this effort can be a bipartisan one.

There is other evidence of that as well. Let me quote from one of our recent presidential candidates, who expressed support for expanding charitable choice as H.R. 7 would do: "I believe we should extend this carefully tailored approach to other vital services where faith-based organizations can play a role, such as drug treatment, homelessness, and youth violence prevention."

That quote was by then-Vice President Al Gore in a speech he delivered to the Salvation Army in 1999. Apparently, he was convincing, because today the Salvation Army is announcing its support for H.R. 7.

So, this is an idea that crosses not only religious but political bounds as well. That makes perfect sense, when you consider that the goal is providing the best services and the greatest choices to those in need. All of us should agree on that.

Without objection, each member will have the opportunity to submit a written statement and have it included in the record.

At this point, Mr. Cardin, would you like to make an opening statement?

[The opening statement of Chairman Herger follows:]

Opening Statement of the Hon. Wally Herger, a Representative in Congress from the State of California, and Chairman, Subcommittee on Human Resources

I welcome all of our witnesses and guests to this morning's hearing on H.R. 7, the "Community Solutions Act of 2001."

I am interested in all the issues raised by H.R. 7, including those designed to increase charitable giving and encourage more savings by low-income families. Those are all important goals, which public policy can and should promote.

As Chairman of the Human Resources Subcommittee, I also look forward to our testimony addressing what is often called "charitable choice". Charitable choice refers to changes made under welfare reform and subsequent laws designed to permit more involvement by churches, synagogues, mosques and others in the faith-based community to help Americans in need. We will hear today about what services are being offered, and what the effect would be of expanding those services, as H.R. 7 proposes.

I trust we also will hear about a number of concerns about separation of church and state, and whether there are adequate protections built into this legislation. I share these concerns because I value the tradition of religious freedom our country has enjoyed. We all have an interest in getting this right. For example, we provided a number of protections in the original charitable choice language in the 1996 welfare reform law. We are also eager to learn whether those protections are working as intended, which is an important concern as we consider further steps.

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So this is an idea that crosses not only religious but political bounds as well. That makes perfect sense when you consider the goal—providing the best services and greatest choices to those in need. All of us should agree on that.

Mr. CARDIN. Thank you, Mr. Chairman.

I appreciate this opportunity. I want to welcome our colleagues that are on the first panel.

I think we all agree that religiously affiliated charities can and do make an incredibly important contribution to this Nation's effort to feed the hungry, house the homeless, and protect the defenseless.

Regrettably, during the recent discussion about President Bush's faith-based proposal, a simple fact tends to get overshadowed: There is already a tradition of support and cooperation between government and religious charities.

United Jewish Communities, Catholic Charities, Lutheran Services, and many other religiously affiliated charities receive significant portions of their budget from Federal, State, and local governments.

The armies of faith and compassion, to which the President so often refers, are already marching. And they are doing so not only with our thanks and blessings, but also with direct government assistance.

However, these organizations have established specific safeguards to prevent clear violations against the Constitution, such as

using Federal funds to promote the advancement of specific religion.

To the extent that President Bush now wants to tear down some of these firewalls between church and State, he is confronted with a number of questions for which his administration has yet to provide adequate response.

For example, to ensure that government is funding secular services and religious messages, does the administration really want to subject churches, synagogues, and mosques to regular government audits?

I understand the President's desire to open the door to Federal assistance more widely to smaller faith-based organizations, and I stand ready to help in that endeavor. But rather than establish a bypass around the constitutional protections designed to ensure the freedom of religion, our efforts may be better directed toward helping smaller faith-based groups navigate the Federal grant-making process.

Providing technical assistance in the design of programs and helping them to establish separate not-for-profit entities to provide government-funded services would be a good start.

Before I conclude, let me express my greatest disappointment with President Bush's proposal to enlist more faith-based groups to meet the needs of the poor.

The President's plan, as well as H.R. 7, provides almost no new resources to help people escape poverty. The scheme to extend the reach of charitable choice merely by putting more spoons into the bowl too small for the mouths that already to depend on it for nourishment is not the right solution.

To expand access to affordable housing, treatment for substance abuse, quality childcare, hunger relief efforts, and other causes to which H.R. 7 would apply charitable choice, we need to increase our Nation's investment, not shift funding streams. Otherwise, we will establish little more than a shell game.

Mr. Chairman, I look forward to hearing from our witnesses today, and hopefully to establishing a bipartisan appreciation for what religious charities already do with the assistance of government and what more they can do if our wallets only meet our rhetoric.

Mr. Chairman, I just want to point out one other thing. Unfortunately, there is no one here from the administration that will be on our panel today. I find that regrettable.

It seems to me that if we are going to try to work in a bipartisan way and to work with the administration, the administration should come before this Committee during our hearing process so that we have opportunity to question them on the proposal. But, unfortunately, there is no here from the administration on the panel.

I look forward to hearing from the people that are here today and working so that we can enhance the ability of faith-based groups to help us solve our national problems.

Chairman HERGER. Thank you, Mr. Cardin.

[The opening statement of Mr. Cardin follows:]

Opening Statement of the Hon. Benjamin L. Cardin, a Representative in Congress from the State of Maryland

Mr. Chairman, I think we all agree that religiously-affiliated charities can and do make incredibly important contributions to this Nation's effort to feed the hungry, house the homeless, and protect the defenseless.

Regrettably, during the recent discussion about President Bush's faith-based proposal, a simple fact tends to get overshadowed—there is already a tradition of support and cooperation between government and religious charities. United Jewish Communities, Catholic Charities, Lutheran Services and many other religiously-affiliated charities receive significant portions of their budgets from Federal, State and local governments.

The armies of faith and compassion to which the President so often refers are already marching—and they are doing so not only with our thanks and blessing, but also with direct government assistance.

However, these organizations have established specific safeguards to prevent clear violations against the Constitution, such as using Federal funds to promote the advancement of a specific religion.

To the extent President Bush now wants to tear down some of these firewalls between church and state, he is confronted with a number of questions for which his Administration has yet to provide an adequate response. For example, to ensure that government is funding secular services and not religious messages, does the Administration really want to subject churches, synagogues, and mosques to regular government audits?

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But rather than establish a by-pass around Constitutional protections designed to ensure the freedom of religion, our efforts may be better directed towards helping smaller faith-based groups navigate the Federal grant-making process. Providing technical assistance in the design of programs, and helping them establish separate not-for-profit entities to provide government-funded services would be a good start.

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To expand access to affordable housing, treatment for substance abuse, quality child care, hunger-relief efforts and other causes to which HR 7 would apply charitable choice, we need to increase our Nation's investments, not just shift funding streams. Otherwise, we will establish little more than a shell game.

I look forward to hearing from our witnesses today, and hopefully to establishing a bipartisan appreciation for what religious charities already do with the assistance of government, and what more they could do if our wallets only meet our rhetoric.

Unfortunately, there is no one from the Administration here with us today to directly respond to some of the concerns that have been expressed about the President's proposal, so I guess we will have to soldier on without them. Thank you.

Chairman McCrery, would you like to make an opening statement?

Chairman MCCRERY. Yes, thank you, Chairman Herger.

This has been a busy week for the Select Revenue Measures Subcommittee. This is our third hearing. We had two hearings earlier this week on energy issues.

And I will say, Mr. Cardin, even though we don't have anybody from the administration, looking out at the panel before us, we have a wealth of talent right here before us.

On Tuesday, we had a panel of our colleagues that gave testimony on energy issues, and it was very enlightening, very informative, and I expect you will find the same from this panel of our colleagues this morning.

Since it has been such a busy week, and we have such a crowded agenda today, Chairman Herger, I am going to dispense with my opening statement and submit it for the record, without objection.

Thank you.

[The opening statement of Chairman McCrery follows:]

Opening Statement of the Hon. Jim McCrery, a Representative in Congress from the State of Louisiana, and Chairman, Subcommittee on Select Revenue Measures

Good morning. Today, we conclude a busy week for the Subcommittee on Select Revenue Measures by joining with Chairman Herger, Ranking Member Cardin, and our colleagues on the Human Resources Subcommittee to examine the role the tax code can play in encouraging more charitable giving.

I want to welcome a fellow Louisianan to today's hearing. Troy Yopp is former Chairman of the Board of Governors of the Shriners Hospital for Children in Shreveport and will provide us with a valuable perspective on this debate. The Shriners' long tradition of providing free medical care to children began in 1922, when they opened their first hospital in Shreveport.

Charitable groups like the Shriners strengthen our communities—they educate our children; they feed the hungry and shelter the homeless; they heal the sick and assist those struggling with the demons of addiction. They nourish our souls, individually through churches and temples and collectively through their contributions to small towns and big cities across America.

Meeting these varied needs is a monumental challenge; fortunately Americans respond by generously donating their time and money to help those in need. According to Independent Sector, nearly 70 percent of all American households make charitable contributions each year to support local charities.

One of the key provisions in both the President's budget and in the Watts-Hall bill would allow a deduction for non-itemizers. As my colleagues know, the tax code included a similar allowance in the early 1980s. I am hoping the testimony today will enlighten us as to how such a deduction can work as well as help us guard against any pitfalls it may present.

Another proposal to be featured today would make it easier for individuals to donate IRA assets to charity. Instead of receiving money from an IRA account as income, the Watts-Hall bill would exclude from income IRA distributions made directly to a charity by those over the age of 59½.

While they have received less attention, several other important proposals will come before us today, including raising the limit on the amount of charitable contributions which can be made by a business and a proposal to encourage businesses to donate excess food inventory.

We will also hear from our colleague, Congressman Cliff Stearns, about a tax levied on private foundations, and have an opportunity to consider whether it is reducing the foundations' ability to serve their communities by unnecessarily sending dollars to Washington. Finally, on the tax side, we will hear about a provision in the Watts-Hall bill which would help low-income individuals save and invest through matching contributions.

In addition, this joint hearing will address the non-tax issues within the jurisdiction of the Human Resources Subcommittee, specifically the Charitable Choice provisions of H.R. 7. As a member of that Subcommittee, I am eager to learn more about how charitable choice could increase federal funding to religious organizations which provide critical social services.

At the same time, I look forward to learning more about the questions which might arise when government assistance is provided to religious organizations. I am particularly interested in learning whether the legislation does or should alter the general exemption religious organizations have from rules prohibiting employment discrimination.

The issues are indeed complex, but we have a distinguished group of witnesses, and I look forward to being enlightened by them.

With that, I yield to my friend, the Ranking Minority Member, Mr. McNulty, for whatever opening comments he would like to make.

Chairman HERGER. Without objection, so noted.

Thank you, Mr. McCrery. Mr. McNulty, would you like to make an opening statement?

Mr. MCNULTY. Yes, I would, Mr. Chairman.

While it is said that true charity comes from the heart, tax laws can play an important role in providing incentives for individual and corporate charitable giving.

I look forward to our discussion of proposals under the Subcommittees' jurisdiction to provide tax deductions for nonitemizers making charitable donations, expanded tax deductions for food donations, tax-free donations by retirees of individual retirement account (IRA) funds, and other suggestions to encourage charitable giving.

There is no question that the nonprofit community provides critical assistance to the needy in our country. With annual revenues of over $600 billion, charities are uniquely effective in providing food, clothing, shelter, and health care, as well as educational and job training services, to the American public.

Of course, the vast pool of American volunteers are the bedrock of our charitable effort. In 1998, for example, more than half of all adults provided some type of volunteer assistance. Further, more than 70 percent of households donated cash or goods to charities.

Importantly, the Tax Code supports this Nation's commitment to our charitable community. In fiscal year 2001, for example, estimates show that charitable contribution deductions claimed by individuals and corporations will result in a Federal tax expenditure of more than $33 billion: about $24 billion for contributions made to social service organizations, $5 billion to educational institutions, and $4 billion to health organizations.

As we discuss the tax provisions of H.R. 7, the Community Solutions Act of 2001, there is much bipartisan agreement on a number of the provisions of the bill. There are also some questions that we need to explore regarding the separation of church and State and the protection of civil rights for all employees.

Also, as we proceed, I want to join my colleagues in emphasizing that the Committee needs to make sure that any additional tax benefits be paid for through appropriate revenue offsets. We need to make sure that the Medicare and the Social Security trust funds are not invaded to finance additional tax cuts.

We need to address all aspects of the bill, including the views of groups interested in expanding the definition of charitable choice and becoming social service providers themselves.

We are fortunate to have a witness today from the American Federation of State, County and Municipal Employees, whose members are already deeply involved with the delivery of social services and can evaluate what the Committee might do to enhance our social safety net.

In conclusion, I want to join Ben Cardin in thanking Subcommittee Chairman McCrery and Subcommittee Chairman Herger for scheduling today's hearing. And I look forward to the testimony, especially from my distinguished colleagues.

Thank you, Mr. Chairman.

[The opening statement of Mr. McNulty follows:]

Opening Statement of the Hon. Michael R. McNulty, a Representative in Congress from the State of New York

While it is said that "true charity comes from the heart," the tax laws can play an important role in providing incentives for individual and corporate charitable giving. I look forward to our discussion of proposals in H.R. 7 under the subcommittee's jurisdiction. They are: tax deductions for non-itemizers making charitable donations; expanded tax deductions for food donations; tax-free donations by retirees of IRA funds; and, other suggestions to encourage charitable giving.

There is no question that the non-profit community provides critical assistance to the needy in our country. With annual revenues of over $600 billion, charities are uniquely effective in providing food, clothing, shelter, and health care, as well as educational, and job training services to the American public.

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We need to address all aspects of the bill, including the views of groups interested in expanding the definition of charitable choice and becoming social service providers themselves. We are fortunate to have a witness today from the American Federation of State, County and Municipal Employees (AFSCME), whose members are already deeply involved with the delivery of social services and can evaluate what the Committee might do to enhance our social safety net.

In conclusion, I join Ben Cardin in thanking Subcommittee Chairman McCrery and Subcommittee Chairman Herger for scheduling today's hearing.

Thank you.

Chairman HERGER. Thank you, Mr. McNulty.

Before we move on to our testimony this morning, I would like to remind our witnesses to limit their oral statements to 5 minutes. However, without objection, all the written testimony will be made a part of the permanent record.

On the first panel today, we are honored to have a number of our House colleagues. I would like to welcome the Honorable Philip Crane of Illinois, Jennifer Dunn of Washington, Tony Hall of Ohio, Cliff Stearns of Florida, Mr. Jerrold Nadler of New York, Mr. Robert C. Scott of Virginia, and J.C. Watts of Oklahoma.

And with that, if we could move to you, Mr. Crane, for testimony, please.

STATEMENT OF THE HON. PHILIP M. CRANE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. CRANE. Thank you, Mr. Chairman, for inviting me here this morning to testify on charitable giving, a subject near and dear to my heart.

Charitable organizations perform an enormously important service to people of all races and ages. I have introduced three separate

bills, each of which encourages charitable giving. I would like to say a few words about such giving in general, and then I will discuss each bill separately. Mr. Chairman, from spiritual counseling to rape crisis centers, charitable organizations are vital to the health and well-being of American citizens. Charity benefits both the giver and receiver in like proportions. The act of giving elevates the heart of the giver. The act of receiving elevates the condition of the recipient. Charity is thus a blessed act that should suffer no discouragement from something so mean as the Tax Code, which contains absurd yet very real disincentives to individuals willing and able to exercise the gift of charity.

Such disincentives have terrible consequences in reducing the resources available to private organizations. And while it is hard to imagine an individual who gives for the purpose of getting a tax deduction, nevertheless, taxes can affect the amount an individual is willing to give.

We now have an excellent opportunity to advance sound tax policy and sound social policy by returning to our Nation's historical emphasis on private activities and personal involvement in the well-being of our communities. My three bills will significantly increase the resources available to our charitable organizations.

The first bill, Mr. Chairman, the Charitable Giving Tax Relief Act, will allow nonitemizers to deduct 100 percent of any charitable contributions up to the amount of the standard deduction. Under current law, while nonitemizers receive the standard deduction, only itemizers can take a deduction for their charitable contributions.

Let me remind members on the panel here, as well as our colleagues on the Committee, this goes back to 1981. We provided this in the 1981 tax act. It had an expiration date, though, in 1986.

In 1985, I introduced a bill to make it permanent. That did not fly. In 1986, I started introducing, and have every Congress since, legislation to restore that deduction for the nonitemizers.

Nonitemizers are predominantly low and middle-income taxpayers, who, as a group, give generously to charitable causes. In other words, charitable organizations supported predominantly by lower income individuals are even more strapped for financial support than they need be. If a young couple struggling to make ends meet nevertheless wants to give $20 to their church, they certainly should not be discouraged from doing so.

I introduced this bill on February 28, and it has been incorporated into H.R. 7.

My second bill, Mr. Chairman, the Charitable Contributions Growth Act, H.R. 776, excludes from the itemized deductions haircut all qualified charitable contributions. Qualified medical expenses, certain investment interest expense, and deductions for casualty losses already receive this treatment. Certainly, charitable contributions should be treated no worse.

Under current law, itemizing taxpayers with incomes above a certain threshold, $128,950 this year for a married couple filing jointly, suffer a phase-down in the total amount of charitable contributions they can take. The phase-down is at the rate of 3 percent of their itemized deductions for every $1,000 over the threshold, up to a total in lost deductions of 80 percent. Thus, a taxpayer making

a $10,000 contribution and subject to this phase-down could lose up to $8,000 in charitable deductions. This is part of the itemized deduction haircut administered as part of the 1986 tax reform act.

As I said in my opening remarks, it is hard to imagine the individual who gives for the purpose of getting a tax deduction. Most individuals give to charity because to do so is a blessing. Nevertheless, taxes can affect the amount an individual is willing to give. When the effective price of charitable giving rises, which is the precise consequence of the phase-down in itemized deductions, there is a disincentive to give.

My third bill, Mr. Chairman, the IRA Charitable Rollover Incentive Act of 2001, would allow individuals age 59 and a-half or older to contribute amounts currently held in individual retirement accounts directly to qualified charities without having to first recognize the income for tax purposes and then take a charitable tax deductions. I introduced the bill, H.R. 774, on February 28, and it has been incorporated into H.R. 7 as well.

The IRA was intended to encourage individuals to save for retirement. But due to the strong economy in recent years, and the general increase in asset values, many individuals have more than sufficient funds to retire comfortably. Thus, it is a common practice for retirees to transfer some of their wealth to charities and, in some cases, that wealth is held in an IRA.

Unfortunately, in many cases under current law, such a simple arrangement results in a loss of some portion of the charitable deduction, and this legislation will give individuals more freedom to allocate their resources as they see fit while providing badly needed resources to churches, colleges, universities, and other social organizations.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Crane follows:]

Statement of the Hon. Philip M. Crane, a Representative in Congress from the State of Illinois

Mr. Chairman, thank you for inviting me here this morning to offer testimony on charitable giving, a subject near and dear to my heart. Charitable organizations perform an enormously important service to people of all races and ages. I have introduced three separate bills, each of which encourages charitable giving. I would like to say a few words about such giving in general, and then I will discuss each bill separately.

Mr. Chairman, from spiritual counseling to rape crisis centers, charitable organizations are vital to the health and well-being of American citizens. Charity benefits both the giver and receiver in like proportions. The act of giving elevates the heart of the giver. The act of receiving elevates the condition of the recipient. Charity is thus a blessed act that should suffer no discouragement from something so mean as the tax code, which contains absurd, yet very real, disincentives to individuals willing and able to exercise the gift of charity. Such disincentives have terrible consequences in reducing the resources available to private organizations. And while it is hard to imagine an individual who gives for the purpose of getting a tax deduction, nevertheless taxes can affect the amount an individual is willing to give.

We now have an excellent opportunity to advance sound tax policy and sound social policy by returning to our Nation's historical emphasis on private activities and personal involvement in the well-being of our communities. My three bills, the Charitable Giving Tax Relief Act, the Charitable Contributions Growth Act, and the IRA Charitable Rollover Incentive Act, will significantly increase the resources available to our charitable organizations.

The first bill, Mr. Chairman, the Charitable Giving Tax Relief Act, will allow non-itemizers to deduct 100 percent of any charitable contributions up to the amount of the standard deduction. Under current law, while non-itemizers receive the

standard deduction, only itemizers can take a deduction for their charitable contributions. I introduced this bill, H.R. 777, on February 28th, and it has been incorporated into H.R. 7.

Non-itemizers are predominantly low—and middle-income taxpayers who as a group give generously to charitable causes. However, lacking a specific deduction for their charitable contributions, there can be no question that they face a disincentive to making charitable contributions relative to itemizers, who tend to be upper-middle income and upper-income taxpayers. This certainly appears unfair. But, more importantly, it means charitable organizations supported predominantly by lower-income individuals are even more strapped for financial support than they need be. For example, churches serving lower-income communities have fewer resources to address the needs of their congregations as a result of this disincentive. If a young couple, struggling to make ends meet, nevertheless wants to give $20 to their church, they certainly should not be discouraged from doing so!

I introduced similar legislation in the 106th Congress, and 149 Members signed on as co-sponsors. I have made two important changes to last year's bill, however. First, taxpayers will now be able to deduct the full amount of their contribution, rather than only half. Second, to prevent certain individuals from gaming the system I limit the amount a non-itemizer can take to the amount of the standard deduction.

My second bill, Mr. Chairman, the Charitable Contributions Growth Act, excludes from the itemized deduction "haircut" all qualified charitable contributions. Qualified medical expenses, certain investment interest expense, and deductions for casualty losses already receive this treatment. Certainly charitable contributions should be treated no worse.

Many taxpayers today contribute to charitable organizations out of the goodness of their hearts and in the expectation that they will not be subject to federal income tax on their gifts. However, in some cases taxpayers suffer a reduction in the amount of their charitable deductions. For example, under current law, itemizing taxpayers with incomes above a certain threshold ($128,950 this year for a married couple filing jointly) suffer a phase-down in the total amount of charitable contributions they can take. The phase-down is at the rate of 3 percent of their itemized deductions for every $1,000 over the threshold, up to a total in lost deductions of 80 percent. Thus, a taxpayer making a $10,000 contribution and subject to this phase-down could lose up to $8,000 in charitable deduction. This is part of the itemized deduction "haircut" administered as part of the 1986 Tax Reform Act.

As I said in my opening remarks, it is hard to imagine the individual who gives for the purpose of getting a tax deduction; most individuals give to charity because to do so is a blessing. Nevertheless, taxes can affect the amount an individual is willing to give. When an individual's tax burden increases, that person has less discretionary income and thus less income to give to charity. And when the effective price of charitable giving rises, which is the precise consequence of the phase-down in itemized deductions, there is a disincentive to give.

My third bill, Mr. Chairman, the IRA Charitable Rollover Incentive Act of 2001, would allow individuals age 59½ or older to contribute amounts currently held in Individual Retirement Accounts (IRAs) directly to qualified charities without having to first recognize the income for tax purposes and then take a charitable deduction. This legislation will give individuals more freedom to allocate their resources as they see fit while providing badly needed resources to churches, colleges and universities, and other social organizations. I introduced a similar bill in the 106th Congress, which garnered 125 co-sponsors. The essence of this bill was included in the tax bill vetoed by President Clinton in 1999 and was included again in the pension reform bill that passed last year. I introduced this Bill, H.R. 774, on February 28th, and it has been incorporated into H.R. 7.

All IRA withdrawals are generally taxed as ordinary income. Currently, individuals may withdraw funds from an IRA without incurring an early withdrawal penalty once they reach age 59½. Under so-called minimum distribution rules, an individual must begin making withdrawals by April 1st following the year he or she reaches age 70½. The IRA was intended to encourage individuals to save for retirement, but due to the strong economy in recent years and the general increase in asset values, many individuals have more than sufficient funds to retire comfortably. Thus it is a common practice for retirees to transfer some of their wealth to charities and, in some cases, that wealth is held in an IRA.

If our tax code were not so laden with peculiarities and oddities, this legislation would not be needed. A taxpayer could readily recognize the income for tax purposes and take a charitable deduction. Unfortunately, in many cases under current law such a simple arrangement results in a loss of some portion of the charitable deduction.

Finally, Mr. Chairman, another proposal that I believe ought to be considered in this context would encourage additional charitable giving by those generous individuals who already contribute the deductible maximum. Under current law, individuals who contribute appreciated property (such as stocks and real estate) to charity are subject to complex deduction limits. While donors can generally deduct charitable contributions up to 50 percent of their income, deductions for gifts of appreciated property are limited to 30 percent of income. For gifts of appreciated property to charities that are private foundations, deductions are limited to 20 percent of income. These limits under present law discourage charitable giving from the very people who are in the best position to make large gifts. Someone who has done well in the stock market should be encouraged to share the benefits. In order to fix this problem we should consider allowing contributions of appreciated property to be deductible within the same percentage limits as for other charitable gifts.

Such a proposal would increase the percentage limitation applicable to charitable contributions of capital gain property to public by individuals from 30 percent of income to 50 percent of income. Thus, both cash and non-cash contributions to such entities would be subject to a 50 percent deductibility limit. In addition, I would propose increasing the percentage limitation for contributions of capital gain property to private foundations from 20 percent to 30 percent

It is impossible to know how much capital is trapped by the current rollover rules and thus unavailable to our nation's charities. According to one report, there is over $1 trillion held in IRA accounts. If only 1 percent of this would be donated to charity but for the tax problems associated with charitable rollovers, this represents a $10 billion loss of resources to these organizations that do so much good.

In closing, I would like to tell you how pleased I am to be offering these three bills, major portions of which have consistently received strong bi-partisan support. I hope we can finally see their enactment in 2001.

Thank you, Mr. Chairman.

Chairman HERGER. Thank you very much, Mr. Crane.

I would also like to recognize the gentleman from Texas, Mr. Chet Edwards, who has joined us at the witness table. And now, for testimony, Ms. Dunn from Washington.

STATEMENT OF THE HON. JENNIFER DUNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Ms. DUNN. Thank you very much, Mr. Chairmen.

Americans in communities across the country give their time, talents, and money to help worthy causes. Americans have been and always will be generous people. No matter the social or economic burdens, Americans strive to make a difference to help those in need, not because they must, but because they care.

In doing so, they strengthen our communities and Nation. As Alexis de Tocqueville wrote in the 1800s, our tradition of strong commitment to private charities is a model for the rest of the world.

According to a study by the Independent Sector, the average household donated about $1,075 in 1999. I think that is an amazing number: $1,075 for the average household that was donated in 1999.

America's generosity is significant. But by changing our Tax Code, we can do even more to encourage people to give.

Our Tax Code encourages charitable contributions by allowing people who itemize to deduct those donations each year, but the deduction is currently unavailable to the two-thirds, as Mr. Crane has said, of all taxpayers, nearly 85 million Americans who don't itemize on their tax returns.

The Tax Code further limits charitable donations by effectively imposing taxes on large gifts and by treating gifts of property and cash differently.

I have introduced legislation that will reward people for their generosity and spur greater giving.

The two issues that I would like to tell you about today, while similar to Mr. Crane's in many ways, have some differences.

The first is called the Neighbor to Neighbor Act. It follows President Bush's lead by expanding the charitable deduction to nonitemizers.

Additionally, the second bill, the Medical Research Investment Act, or the MRI Act, will channel more money to help discover cures and treatments for horrible diseases like Parkinson's and leukemia.

The Neighbor to Neighbor Act has four main provisions. It extends the charitable deduction to nonitemizers equal to the allowable standard deduction given to individuals who don't itemize on their tax return.

For example, an individual nonitemizer can deduct up to $4,550 worth of charitable contributions as they present their tax returns.

It also allows individuals to donate to charity up to April 15 of the new taxable year, and this is a variation on the Crane bill, and apply those donations against the previous year's taxable income.

It also equalizes property and cash donations. Under current law, the amount of the allowable deduction for property is 30 percent of a person's income. This will rise to 50 percent under this bill, the same amount that is now allowed for cash contributions.

This bill also eliminates the 50 percent income limitation for the contribution of money from an IRA so that more resources do reach the charity before being taxed.

These changes will strengthen all charities. According to a recent PricewaterhouseCoopers study, expansions of the deduction to nonitemizers would create $11 million new donors. And it could lead to an additional $14.6 billion in contributions.

In my State of Washington, charities could see a $1.7 billion increase in donations over the next 5 years. That is why over a dozen Washington State-based charities and nonprofit organizations have endorsed this legislation.

Expanding the charitable deduction to include nonitemizers will also provide broad-based tax relief to low and middle income Americans. These are the folks who overwhelmingly use the standard deduction.

The second measure is called the MRI Act, the Medical Research Investment Act. It will improve our public health by encouraging donations to medical research groups.

Under the current Tax Code, deductible charitable cash gifts to support medical research are limited to 50 percent of an individual's adjusted gross income. The Medical Research Investment Act would increase the deductibility to 80 percent of a person's income.

In addition, the act allows people to donate stock without being penalized. Under current law, an individual who would like to donate $1,000 to charity has to sell $1,400 worth of that stock to pay the taxes. In my bill, the donor would not pay any capital gains taxes if he chooses to turn those stocks over to charity.

These seemingly small changes will have an enormous impact on funding for medical research. According to an independent study conducted by PricewaterhouseCoopers, the MRI Act could lead to an additional $180 million donated to medical research in this year alone.

The Neighbor to Neighbor Act and the Medical Research Investment Act each enjoys strong support from the charitable community. Several of the provisions in the Neighbor to Neighbor Act are found in H.R. 7, and I am hopeful that my colleagues will help ensure that medical research also will be included.

It is important for us to remember that the American's social safety net is woven with two distinct threads: government assistance and private charity. Though private charities can never replace government, we should endeavor as lawmakers to craft policies that will tap into the generosity of the average American.

I strongly believe both of these bills will accomplish that noble goal.

[The prepared statement of Ms. Dunn follows:]

Statement of the Hon. Jennifer Dunn, a Representative in Congress from the State of Washington

Americans in communities across the country give their time, talents, and money to help worthy causes. Americans have been and always will be generous people. No matter the social or economic burdens, Americans strive to make a difference to help those in need—not because they must, but because they care. In doing so, they strengthen our communities and nation. As Alexis de Tocqueville wrote in the 1800s, our tradition of a strong commitment to private charities is a model for the rest of the world.

According to a study by the Independent Sector, the average household donated approximately $1,075 in 1999. Americans' generosity is significant, but by changing our tax code we can do more to encourage people to give.

Our tax code encourages charitable contributions by allowing people who itemize to deduct those donations each year. But the deduction is unavailable to two-thirds of all taxpayers, nearly 85 million Americans, who do not itemize. The tax code further limits charitable donations by effectively imposing taxes on large gifts and by treating gifts of property and cash differently.

I have introduced legislation that will reward people for their generosity and spur greater giving. The Neighbor to Neighbor Act follows President Bush's lead by expanding the charitable deduction to non-itemizers. Additionally, the Medical Research Investment Act will channel more money to help discover cures and treatments for horrible diseases such as Parkinson's and leukemia.

The Neighbor to Neighbor Act has four main provisions:

- It extends the charitable deduction to non-itemizers equal to the allowable standard deduction. For example, an individual non-itemizer can deduct up to $4,550 of charitable contributions.
- It allows individuals to donate to charity up to April 15th of the new taxable year and apply those donations against the previous year's taxable income.
- It also equalizes property and cash donations. Under current law, the amount of the allowable deduction for property is 30% of an individual's income; this will rise to 50%, the amount allowed for cash contributions.
- It eliminates the 50% income limitation for the contribution of money from an IRA so that more resources reach the charity before being taxed.

These changes will strengthen all charities. According to a recent study, expansion of the deduction to non-itemizers would create 11 million new donors and could lead to an additional $14.6 billion in contributions.

In my home state of Washington, charities could see a $1.7 billion increase in donations over the next five years. That is why over a dozen Washington state based non-profit organizations have endorsed my legislation.

Expanding the charitable deduction to include non-itemizers will also provide broad-based tax relief to low and middle income Americans. These are the people who overwhelmingly use the standard deduction.

The second measure, the Medical Research Investment Act (MRI Act), will improve our public health by encouraging donations to medical research groups. Under the current tax code, deductible charitable cash gifts to support medical research are limited to 50% of an individual's adjusted gross income. The Medical Research Investment Act simply increases the deductibility to 80%.

In addition, the Act allows people to donate stock without being penalized. Under current law, an individual who would like to donate $1,000 to a charity has to sell $1,400 of stocks to pay the taxes. In my bill, the donor would not have any capital gains taxes.

These seemingly small tax changes will have an enormous impact on funding for medical research. According to an independent study conducted by PriceWaterhouseCoopers, the MRI Act could lead to an additional $180 million donated to medical research per year.

The Neighbor to Neighbor Act and the Medical Research Investment Act each enjoy strong support from the charitable community. Several of the provisions in the Neighbor to Neighbor Act are found in H.R. 7. I am hopeful my colleagues will help ensure that medical research is also included.

It is important for us to remember that the American social safety net is woven with two distinct threads—government assistance and private charity. Although private charity can never replace government assistance, lawmakers should endeavor to craft policies that will tap into the generosity of average Americans. I strongly believe both of these bills will accomplish that noble goal.

Chairman HERGER. Thank you very much, Ms. Dunn.

Mr. Edwards has indicated that he is involved in a markup now, so without objection, if we could move to Mr. Edwards for testimony, and then you will leave for your markup again. Mr. Edwards?

STATEMENT OF THE HON. CHET EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. EDWARDS. Thank you, Chairman Herger, and members of the Committee.

Let me thank you for dealing seriously and carefully with an issue that our Founding Fathers felt was so important they not only put it in the Bill of Rights, they put it in the first 16 words of the First amendment thereof, the whole issue of what is the proper relationship between government and religion.

I think the issue before us today in this Congress is not whether faith is a powerful force. As a person of faith, I believe there is no power that equals that. The question is not whether charities do good work in America.

I think the challenging question we must face as Members of Congress is how do we help charities without entwining politics and religion, which all of human history and all of our knowledge of human behavior shows is a terrible, threatening mix, when we allow government to begin to regulate and fund religion.

Let me say that just yesterday we passed a resolution on the floor of the House, I believe unanimously, condemning the Afghanistan regime for their mistreatment of religious minorities. In China today, citizens are being jailed because of their religious faith. In the Middle East, people are put every day in prison because their religious beliefs are not consistent with the beliefs of the majority religion of that country.

I would ask the members of this Committee today to ask yourselves: Is there any other nation in the world today, perhaps in the

history of the world, that has more religious freedom, more religious tolerance, or more religious generosity, than the United States of America?

We are the crown jewel to the world. We are a beacon to the world of how to handle religious freedom and religious tolerance.

There is a reason we have gotten it right in America. Unlike most countries, we don't intertwine government and religion.

And separation of church and State, Mr. Chairman, does not mean keeping people of faith out of government. It means, according to our Founding Fathers, keeping government out of religion.

I think there is a right way and wrong way to help charities do good work in America. The right way is to provide tax incentives to those who, out of their own charity, give to these organizations.

I think the wrong way is to go down the path as proposed in some legislation, including H.R. 7 by Mr. Watts and Mr. Hall, that would really for the first time in our country's history, along with two or three other bills we have recently passed, would have the Federal Government tax dollars going directly, not to faith-based groups or charities, but directly into our houses of worship, into our synagogues, into our mosques.

I think that this is a prescription for government regulation of religion, for intolerance, ultimately, for in-fighting as 2,000 different religions in America compete for billions of dollars of Federal funding.

I urge this Committee and all Members of Congress, wherever we eventually come down on this legislation, to think carefully about our need to be extremely cautious about getting government dollars involved in our houses of worship.

I think there are three specific things, Mr. Chairman, we can do to stop this type of encroachment of government into religion.

The first is, in H.R. 7 or any other bill we pass, let's say dollars can go to faith-based charities, but they can't go directly to a house of worship.

Imagine, 10 years from now, there are Federal auditors going into our synagogues and our churches. Do they eventually prosecute the pastors, the rabbis, the church committees? I think that is fraught with great, great disaster.

Secondly, I don't think anyone should support—and I have not heard anyone that said they would in principle—the idea of using your and my tax dollars to allow other individuals to use government resources to force their religion, their faith, upon other people.

Just within the last 2 weeks, we have had testimony from one group, though, that has used, I believe, government funds and said part of their goal was to complete Jews. Jews across America found that, rightfully so, to be an offensive statement. This particular group said they would not hire people of the Jewish faith.

That is why I think it is so important that we not only prohibit proselytizing but also discrimination using Federal dollars. The Methodist church wants to hire a Methodist pastor. As a Methodist, I think that is right. That is an exemption they should have under the civil rights code.

But to allow anyone, any taxpayer, to take your and my tax dollars and put out a sign and say people of any particular faith are

not allowed to be hired because of their faith alone I think is wrong.

There is a right way and wrong way to support charities. I thank you for your serious attention to what is an extremely important and complicated issue.

Thank you, Mr. Chairman and members.

[The prepared statement of Mr. Edwards follows:]

Statement of the Hon. Chet Edwards, a Representative in Congress from the State of Texas

Chairman Herger and McCrery, Ranking Members McNulty and Cardin, and Members of the Subcommittees:

Thank you for allowing me to testify today on Charitable Choice as provided in H.R. 7, the Community Solutions Act. I appreciate your and the subcommittee's interest in this very important issue and for giving it the attention it deserves.

I want to say that as a person of faith, I believe religion has a profound impact on our private values and personal lives and upon our public life as a nation. Because of this fact, I am not questioning the need for religious bodies to help with social problems.

But, I believe the fundamental question that faced our founding fathers and faces us today is this: what it the proper partnership of government and religion.

In my opinion, Charitable Choice is the wrong solution to a real problem. Under current law, faith-based groups may already accept federal dollars under three conditions: they cannot be pervasively sectarian, they cannot proselytize, and they cannot discriminate on the basis of religion in their employment practices.

Charitable Choice changes those conditions. Charitable Choice makes it possible for the government to subsidize churches and other thoroughly religious entities that provide social services. This proposal will provide tax dollars to religious groups and open the door to government review of church activities.

For many years the law has permitted groups that are affiliated with religious bodies (e.g. Catholic Charities and Lutheran Social Services, Jewish Federations) to receive tax funds to provide secular social services. But charitable choice represents a radical and misguided revision of the law. Indeed, many ministers believe that Charitable Choice will do great harm to religion.

Carl Esbeck, testifying as the Senior Counsel to the Deputy Attorney General of the United States, recently stated at a hearing before the Constitution Subcommittee of the House Judiciary Committee that the Charitable Choice provisions of H.R. 7 do not allow proselytization, either warranted or unwarranted, during the government funded program. This is definitely a step in the right direction. However, this clarification does not solve all my problems with charitable choice.

Because regulation always follows tax funds, Charitable Choice opens the door to invasive government monitoring, regulation and accounting of churches, clergy, and other leaders of the church. For these reasons, people like Freddy Garcia, who runs the highly successful Victory Fellowship ministry for drug addicts in San Antonio, has said, "I don't want any grants. I'm a church . . . All I want is for the government to leave me alone."

Also, because there is limited money in the public purse and thousands of religious groups in our country, charitable choice will force the government to pick and choose which religions it funds. Churches may have to compete for government grants before elected legislators. "The best way I know of to destroy religion is to have all the churches fighting over a big pot of money," says Rev. J. Brent Walker, general counsel of the Baptist Joint Committee on Public Affairs.

Charitable Choice will generate serious problems that have not been seen on a large scale in this country in over 200 years—outright religious infighting, intolerance and discrimination.

This is a perfect program if you want your tax dollars going to any and every self-proclaimed religious group, you'd like the government auditing your church and you have no problem with ignoring the Bill of Rights and its protections of religious freedom.

The American public recognizes the danger Charitable Choice poses to religious freedom. In fact, 68 percent of Americans contacted in a Pew Forum poll worry that Charitable Choice type programs could lead to government involvement in religion.

If we allow government to fund and become involved in religion, it will harm religion, not help it. It is people of faith who must point out that church-state separa-

tion does not mean keeping people of faith from being involved in government but rather it means keeping government from being involved in religion.

I believe Madison got it right in the Bill of Rights, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." For over two centuries, those 16 words have worked to protect our religious freedom, and in my opinion, make religious liberty the crown jewel of America's experiment in democracy.

As students of human behavior, and human history, Madison and Jefferson understood that, in general, politicians, if allowed, could not withstand the temptation to use religion as a means to their own political ends.

Our faith is and should be a powerful force in the private and public lives of elected officials; none of us has the right to use the power or laws of government to force our religious faith upon others.

The Bill of Rights and the high principle of church state separation have made America a land of unparalleled religious freedom and tolerance. We tamper with those principles at our own peril.

I will end with this statement made by Martin Luther king, Jr. "The church must be reminded that it is not the master or the servant of the state, but rather the conscience of the state." (*Strength to Love*, p. 47,1963)

Chairman HERGER. Thank you for your testimony, Mr. Edwards. Now we will move to one of the principal sponsors of this legislation, H.R. 7, Mr. Hall.

STATEMENT OF THE HON. TONY P. HALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. HALL. Thank you, Mr. Chairman and members.

I do appreciate the chance to participate in this hearing. There has been a lot of controversy, there has been a lot of heat. I am hoping that this Committee can bring enough light to the public debate. I am hopeful that your work on this bill will kind of right that imbalance.

I am thankful to Mr. Watts for bringing this idea to me. I was a very easy sell. I have been participating in faith-based organizations for years. I do a lot of work in the area of hunger.

It is very interesting, that for tens of years and longer, we have been putting hundreds of millions of dollars every year through international faith-based organizations. As a matter of fact, the three top nonprofit agencies in the world are World Vision, Cooperative Assistance and Relief Everywhere, Inc., and Catholic Relief Services, and two out of the three are faith-based. They do a very, very good job of separating religion, faith, proselytizing, and delivering the services.

I think here we are not talking about large organizations. Large organizations can pretty much take care of themselves. They form 501(c)(3)s.

We are talking about smaller organizations, organizations that, every year, are having a tough time raising money, but they are doing the job. And they are doing a tremendous job.

And if it wasn't for them, there wouldn't be anybody else there. And they are there because of their faith, but they don't wear their faith on their lapel. They are not trying to convert people to God or to any other religion. They are delivering the goods. They are doing it because of their faith.

I am thinking of two organizations, one in Appalachia in southeast Ohio that I visited last year. It is out of my district. I have helped them. It is the poorest county in all of Ohio. One in 10 people is suffering from hunger.

And a guy by the name of Mel Franklin, through the Methodist Church, is delivering goods and services. As far as I know, he is not getting any Federal help. But he is just doing the job. If it wasn't for him and his program, it wouldn't be done.

I know of a nonprofit, faith-based organization over here that I work with in Anacostia. And there are two men there that are exathletes. One is a great track man; another one used to play for the Cleveland Browns.

Well, they work with kids in Anacostia High School, kids that just need love and attention. I have been with them in their high school where the kids love them, and the teachers come up and hug them.

After school, these kids come over to their houses. They have a weight-training studio. They have a recording studio. And they just teach them about life.

And it is in an area where there are more murders in that neighborhood than any other place in Washington, DC. And it has always been that way. There is nobody else in the neighborhood. I don't see any secular groups wanting to go down there and do the work. This is a two-three man program.

And that is pretty much what we are talking about when we are talking about funding faith-based organizations, small organizations that have a track record, that are doing the job.

And they don't apply for Federal funds because it is cumbersome and it is burdensome. And there is a heck of a lot of paperwork. But they ought to be part of the mix, if we are ever going to address the issues like hunger and poverty, if we are ever going to solve some of the problems in this country.

We should not have hunger in America. We have 31 million people that go to bed hungry three or 4 days out of every month. We ought to end it. And we can end it, if we work together and if everybody is part of the competition and receiving the funds.

I want to draw your attention to one provision of the bill that will assist in the fight against hunger. It is a bill that I introduced for several years now. It is called the Good Samaritan Tax Act. This would encourage donations of food from the private sector. It would allow all businesses, instead of only corporations, a tax break for donating food. We treat food differently.

This idea of ending hunger in America is only one part of it. Faith-based organizations, if they can demonstrate that they can do a better job, then they should receive a grant.

Reverend Luis Cortes, who you will hear from later, put it best. He said to me that the Latino congregations he serves, they want nothing more than access to these resources that have been available to other groups for years. They want to have a chance.

I am not a constitutional expert. I am not a lawyer. I am told the language in the bill is good and it is strong. And I know that we will be debating that.

And, finally, I want to say that there are a lot of supporters. We have heard a lot of opponents to this bill, but what about the sup-

porters? U.S. Conference of Catholic Bishops, pretty good, pretty sincere organization here; the Salvation Army, a wonderful organization; World Vision; the Union of Orthodox Jewish Congregations of America; the Corp. for Enterprise Development; the Center for Faith-Based Initiative. And it goes on and on and on. I would like to submit for the record letters from the U.S. Conference of Catholic Bishops and the Salvation Army.

[The following was subsequently received:]

Department of Social Development and World Peace
Washington, DC 20017–1194
June 11, 2001

Hon. Tony P. Hall
United States House of Representatives
Washington, DC 20515

Dear Representative Hall:

The United States Conference of Catholic Bishops welcomed the announcement earlier this year of the President's Faith-Based and Community Initiatives proposal because of the proposal's focus on overcoming poverty, and its affirmation of the complementary roles and responsibilities of religious groups. community organizations and government. (See enclosed statement.)

We write to reaffirm our support for the initiative and to offer our help in seeking to refocus the debate on the needs of poor people and the call to meet the moral challenge posed by so much poverty in the midst of so much affluence in our land. Unfortunately, much of the debate thus far has been polarized and ideological, focused more on old battles over church-state issues and attempts to gain partisan advantage than on new opportunities to reach out to help those pushed to the sidelines of our National economic life. But we see in the President's proposal, and legislation implementing it, new assets in addressing the most difficult problems in our neighborhoods and communities: persistent poverty, violence, substance abuse, inadequate housing, and obstacles faced by those who are entering the job market.

The sad fact is that in many communities where disinvestment and discrimination exacerbate the problems of addiction, family disintegration, and violence, churches and community-based charities are often the only institutions still there and able to address the pervasive poverty of their neighbors. We have to find better ways to build the capacity and support the hard work of these community lifelines. This is why we support the Faith-Based and Community Initiatives proposal and will work with Congress to refine, improve and pass H.R. 7, the Community Solutions Act of 2001.

In particular, the bishops' conference strongly supports the following provisions of H.R. 7: first, allowing non-itemizers to claim charitable deductions on their taxes, and second, expanding "charitable choice" to allow religious organizations to participate in government funded programs on the same terms as other groups, without altering their religious character. Charitable choice already applies to the Temporary Assistance to Needy Families and welfare-to-work grant programs, Community Service Block Grants, and substance abuse treatment and prevention services under the Public Health Services Act. H.R. 7 would extend charitable choice to programs relating to juvenile delinquency, crime prevention, housing, the work force, older Americans, child care, community development, domestic violence, hunger, and job access and transportation.

While we take seriously the concerns and fears of those who have doubts about stronger ties between religious groups and the Federal government, it is worth noting that religious groups have been permitted to hire their own members under Title VII of the Civil Rights Act for over 35 years. The bishops' conference, which has long been a vigorous advocate and defender of America's civil rights laws, believes there is no conflict between strong civil rights protections and application of Title VII to faith-based and community initiatives under charitable choice. Indeed, we believe that the faith—based and community initiatives proposal is a positive and needed recognition of the pluralism of American religious life and the contributions of religious and non-profit community institutions and groups.

This initiative should lead to greater investment of public and private resources in overcoming poverty, including additional Federal resources for the potential new opportunities created by H.R. 7. While this legislation opens the door to groups that may have been left out of public programs in the past, more competition over the

same or fewer resources is not an answer. Indeed, a commitment to increase Federal resources to address the needs of the poor would strengthen the proposal and assist its supporters. We will urge Congress to include President Bush's proposed Compassion Capital Fund in H.R. 7 as a first step toward making more resources available and encouraging expanded public-private partnerships.

It is also important to acknowledge that faith-based and community efforts cannot substitute for just public policy and the responsibilities of the larger society, including the Federal government. The efforts of religious and community groups can touch hearts and change lives, but their work cannot replace needed government action to address the more than 40 million Americans without health care, the many children who go to bed hungry, and the millions of families who work every day, but cannot provide a decent future for their children. Our nation still needs significant public investments in health care, nutrition, child care and housing. Faith-based and community initiatives are essential, but government still has an indispensable role in assuring that the basic needs of the American people are met.

Amid all the controversy, we need to remind ourselves why the President's proposal and this legislation are necessary. The simple fact is that our nation leaves too many people without the resources they need to build a life of dignity, without hope for a future of opportunity. Bureaucratic "business as usual" and the re-fighting of old ideological and partisan battles are not adequate responses to this moral scandal, this national challenge. Clearly, the faith-based and community initiatives proposal and the passage of H.R. 7 will not end the struggle to overcome poverty, but they can play a significant part in advancing it.

Sincerely yours in Christ,

His Eminence Cardinal Roger Mahony
Archbishop of Los Angeles
Chairman, Domestic Policy Committee

The Salvation Army
Alexandria, Virginia 22313
June 12, 2001

Hon. Tony Hall
1432 Longworth House
Washington, DC 20515–3503

Dear Mr. Hall:

As the National Commander of The Sa1vatian Army, I am writing to seek your support for The Community Solutions Act of 2001 (HR7). We believe that this piece of legislation can create a stronger and expanded social service network in this country. We also believe that the outcome will be more needed services to more of America's poor for many, many years to come.

Last year 37 million people came to The Salvation Army for help and we embraced each of them with unconditional love and compassion. In fact, for more than 120 years, The Salvation Army has worked to build a social service network in communities throughout our country providing aid and comfort to those in need. Today, through our highly integrated network of nearly four million professionals and volunteers, who work in 9,222 centers of operation, we provide services in every zip code and every congressional district in America, including the one you represent.

While not all of our programs are in partnership with the government, many of them are, serving senior citizens, prison inmates and their families, victims of domestic abuse, the homelessness, low-income children, those affected by drug addiction, the unemployed. The list is long—the needs are many. This is precisely why we see great value in HR 7.

In our view, HR7 will help people by expanding provisions under "charitable choice" to promote greater access to those who need the types of social services provided by The Salvation Army and other faith-based organizations. These provisions further previous charitable choice legislation enacted with bi-partisan support in 1996 and 1998 that apply to the Welfare-to-Work program, Community Services Block grant program and several drug treatment programs. We see great potential, for example, in the establishment of Individual Development Accounts (IDAs) that will help low-income families begin building toward financial stability.

Additionally, HR7 will provide millions more Americans with the opportunity to realize the benefits of charitable giving. The non-itemizer tax deduction in the bill is vital, in our estimate, for increasing donations to charities, and potentially could raise $14 billion per year from 11 million new charitable contributions.

We are heartened by the renewed efforts in Congress to broaden our country's social service outreach, and the support of faith-based organizations such as The Salvation Army. I appreciate your interest in these matters, and ask for your personal support of this bill.

Sincerely yours,

Commissioner John Busby
National Commander

I think that the best kind of faith, the best kind of religion, is the kind of faith and religion that St. Francis said a long time ago. He said something to the effect of: We need to preach the gospel at all times, and if necessary we need to use words.

And the best kind of faith I think is not converting people, it is helping people and loving them. And that is what we are talking about. We are not talking about large organizations. We are talking about organizations that are so good, but they have this funding problem every year.

It is hard for them to compete for money and to develop and expand their program.

And that is what I think faith-based is all about.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hall follows:]

Statement of the Hon. Tony P. Hall, a Representative in Congress from the State of Ohio

Chairmen Herger and McCrery, Ranking Members Cardin and McNulty: I appreciate your hosting this joint hearing on the Community Solutions Act. It is an honor to testify before your subcommittees today, and I look forward to a discussion of the challenges of serving Americans in need and of the ways this bill tries to meet those challenges. Unfortunately, there has been too much heat and not enough light in the public debate so far. I am hopeful that your work on this bill will right that imbalance.

I want to begin by thanking President Bush for his leadership on the faith-based and community initiative. His commitment to this has been remarkable, and it is a pleasure to assist him.

I also want to thank Congressman Watts, my co-sponsor, and Speaker Hastert, who has given us both the support and encouragement this initiative merits. I also want to acknowledge Congressman Bobby Scott, who is a good friend and colleague, despite our disagreements on this issue.

Vinton County, Ohio

I am involved with this issue because I am determined to see an end to hunger in America. I have spent most of my Congressional career focused on how to alleviate hunger and its related problems, at home and around the world. Serving as chairman of the Select Committee on Hunger remains one of my proudest accomplishments, and I am pleased that this initiative has revived some of the bi-partisan spirit that drove that Committee to its many successes.

Last summer, I toured Appalachian communities in Southeastern Ohio, Kentucky and West Virginia. In one of my state's poorest counties, I visited CARE United Methodist Outreach B an organization distributing food to more than 350 families (about one in 10 of Vinton County's people). In addition to food, this group provides household necessities, clothing, job assistance and almost anything else that a person might need. Reverend Mel Franklin works tirelessly to care for all of those in his parish, and often dips into his own shallow pockets to help those in need.

Anacostia, DC

A long way from Vinton County B but just a few minutes from where we sit today B Reverend Ricky Bolden, J.T. Musgrove and Reverend Steve Fitzhugh work at The House, an initiative that works with youth from Anacostia High School in one of the toughest neighborhoods in the District. These former athletes provide academic, athletic and artistic activities, as well as positive role models for many teenagers

who don't have caring men in their lives. Their gumption is sobering: one of the teenagers they were working with was murdered two blocks away from their front door. But they have made progress: with their help, a gang leader has turned his life around and now works with other at-risk teens in The Houses' youth service corps.

These are just two of the thousands of examples of faith-based organizations around the country. Whether in rural Appalachia or inner-city DC, whether they are feeding people or tending to their other problems, these community-minded ministers are working where no one else wants to go. And, surprisingly often, they are achieving successes that no one else is even attempting. The truth is this: without groups like theirs, some of the people who need help most probably would not be served.

Hunger as an Example

My work on hunger has brought me face-to-face with everyday heroes like these men of God and with the men, women and children that they serve. In fact, almost three quarters of all community kitchens and food pantries across the country are run by churches, congregations or other faith-based organizations.

In my own district of Dayton, Ohio, a survey of 100 Miami Valley faith communities B ranging from Methodist to Muslim and Baptist to Baha'i B found that most of these congregations were providing food through pantries or kitchens, often in conjunction with other congregations or agencies.

With 31 million Americans hungry or threatened by hunger, there is no question that these groups are essential to the social fabric of our lives. With widespread reports that food pantries are seeing sharp increases in requests for their help, it is clear that more needs to be done to assist both these organizations and the people they serve. Hunger is just one of the issues that this bill would address.

Good Samaritan Tax Act

I want to draw your attention to one provision of the bill that will assist in the fight against hunger, before moving on to the charitable choice provisions. In recent years, I have repeatedly introduced a bill called "The Good Samaritan Tax Act." This would encourage donations of food from the private sector, by putting donations of food on the same tax footing as donations of other items. It will allow all businesses, instead of only corporations, a tax break for donating food and it would clear up a question about the actual value of donated food. In turn, this would encourage farmers, restaurants and others to be more generous in their donation of food to programs aimed at helping hungry Americans.

This year, Congressman Richard Baker of Louisiana, along with Representatives John Lewis, Jim Ramstad, Karen Thurman, Phil English and Charlie Rangel, have all joined me in introducing H.R. 990. I also am thankful to Amo Houghton who has been a strong champion of this idea, along with Senators Lugar and Leahy. I know they share my hope that this provision will increase the food that is donated to charities B many of them faith-based B that provide emergency food aid to the one in 10 Americans who turn to them for help. I am pleased that the provisions of H.R. 990 have been included in H.R. 7.

Need for Legislation

It is because of my work on hunger that I am supporting the President's initiative. I have been to inner-city neighborhoods; I have been to Native American reservations; I have been to our rural areas. I have seen people in need in our nation's richest communities, and in the shadow of our Capitol. I have seen people struggle to get their lives back together and to provide for their families.

And I have seen people of all kinds of faith B even if it is simply a faith in humankind B make tremendous differences in peoples' lives.

Simply put, our bill would allow religious organizations to compete on a level playing field with other groups in order to provide certain social services. This is not about rewarding certain denominations or favoring specific faith-based organizations. This is about finding the groups that will get the best results in caring for "the least, the last and the lost."

If a faith-based group can demonstrate that it does that better than a secular group, then it should receive the grant. A group should not receive any money simply because it is faith-based. Federal funds should be an investment that produces results. But if a faith-based group can get those results, it should not be barred from competing for Federal funds.

Reverend Luis Cortes, who you will hear from later, put it best. He told me that the Latino congregations he serves want nothing more than access to these resources that have been available to other groups for years. In their neighborhoods, the church is the only institution that the members of these congregations feel they

control. Just as many African-American communities found, Hispanic empowerment and self-improvement are intertwined with the church.

Constitutional Questions

Some observers have raised concerns about the constitutionality of charitable choice and the potential erosion of the separation of church and state. I am not a Constitutional expert, but I do want to point out a number of the bill's provisions designed to address these concerns explicitly.

"Federal, state or local government funds that are received by a religious organization for the provision of services constitutes aid to individuals and families in need and not aid to the religious organization," the bill states in Section 201(c)(2).

The bill continues, *"the receipt by a religious organization of Federal, state or local government funds is not and should not be perceived as an endorsement by the government of religion or the organization's religious beliefs or practices."*

The bill does allow religion to be a consideration in hiring decisions, but this simply continues the Title VII exemption of the Civil Rights Act of 1964. HR 7 does not change current civil rights law; in fact, it specifically states in Section 201 (e)(3), *"nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions prohibiting discrimination on the basis of race, color, and national origin or sex and visual impairment or disability or age."*

Another important provision of the bill is its prohibition against proselytizing using government funds in Section 201 (I).: *"No funds shall be expended for sectarian worship, instruction or proselytization. A certificate shall be signed by such organizations that gives assurance that the organization will comply."*

Faith-based groups should provide services to the poor out of their love of God, not because they want to convert someone to their specific belief. They do this already, but this provision underscores that this is Congress' intent in this legislation.

Finally, nowhere does the bill state that a religious organization *must* apply for funding. If any organization is worried that government funds will corrupt its religious mission, or come with too many strings attached, or pose any other problem, it should not apply for Federal funds. If any organization thinks that the Federal government will be its savior and provide everything it needs, it should rethink its theology. The funds that this initiative aims to open to more organizations are not meant for everybody. Those groups that are so infused with faith that there can be no separation between that faith and any service it provides probably should not apply for these funds.

Opponents of the Legislation

I know that many critics have voiced their opposition to this bill. I have met with some of these critics, including many who are friends with whom I work on other issues.

But there are also many organizations that do support The Community Solutions Act, including many that already are working on the front lines of the fight against poverty and misery.

This week, the U.S. Conference of Catholic Bishops voiced their strong support for this bill. Its letter explained why this way: *"the sad fact is that in many communities where disinvestment and discrimination exacerbate the problems of addiction, family disintegration, and violence, churches and community-based charities are often the only institutions still there and able to address the pervasive poverty of their neighbors. We have to find better ways to build the capacity and support the hard work of these community lifelines. This is why we support the Faith-Based and Community Initiatives proposal and will work with Congress to refine, improve and pass H.R. 7, the Community Solutions Act of 2001."*

The Conference also specifically addresses the fears of employment discrimination: *"it is worth noting that religious groups have been permitted to hire their own members under Title VII of the Civil Rights Act for over 35 years. The bishop's conference, which has long been a vigorous advocate and defender of America's civil rights laws, believes there is no conflict between strong civil rights protections and application of Title VII to faith-based and community initiatives under charitable choice."*

The Salvation Army, which serves more than 37 million Americans in every ZIP code in the country, also supports this initiative. *"We are grateful for the efforts being made in Congress to expand charitable giving . . . and we welcome the Community Solutions Act of 2001 (H.R. 7), which would expand these provisions to a greater number of federal programs. Both [provisions] would assist The Army in serving the neediest residents of our communities throughout America, while maintaining our religious identity . . . we believe that this piece of legislation can create a stronger and expanded social service network in this country. We also believe that*

the outcome will be more needed services to more of America's poor for many, many years to come.

Other respected organizations have endorsed the Community Solutions Act as well, including:

- Habitat for Humanity International,
- the Union of Orthodox Jewish Congregations of America,
- the National Association of Evangelicals,
- Corporation For Enterprise Development,
- World Vision,
- the Center for Faith-Based Initiative,
- the Christian Community Development Association,
- Evangelicals for Social Action, and
- the National Hispanic Religious Partnership.

Conclusion

I want to conclude by lamenting that this initiative has gotten caught up in partisan politics. This should not be an issue that divides Democrats and Republicans, and I hope there will be room for compromise.

I think that we need to refocus on how we can best serve those in need. I support the bill in its current form, but I stand willing to work with people of good will on both sides to ensure that low-income individuals are better served. That is the bottom line of this bill and my support for this initiative.

For example, I wholeheartedly support the President's proposal to include a Compassion Capital fund that would provide federal funds to leverage money from the private sector. This fund would provide training and technical assistance to local congregations and other community-based groups, as well as meet certain social priorities, such as working with children of prisoners. We need additional resources to meet these challenges and this fund would be a step in the right direction. I strongly encourage the committee to add a provision to authorize this Compassion Capital Fund, as President Bush requested.

I want to give St. Francis, a Catholic saint, the last word. He said, *"Preach the gospel at all times. If necessary, use words."* Every faith tradition is filled with commandments to help the poor, the widows and the orphans. Our government should do everything we can to assist those who live their faith every day by following religious teachings that we should all care for the least among us.

Chairman HERGER. Thank you, Mr. Hall. And, again, I want to thank you not only for testimony today but for your many years of working in this area. Thank you very much for your leadership.

We do have two votes on the floor. The first is a 15-minute vote followed by a 5-minute vote.

Why don't we maybe hear one more, if you don't mind, Mr. Stearns, and then we will briefly recess after that.

STATEMENT OF THE HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Thank you, Mr. Chairman. I think I can put this together quickly.

I ask unanimous consent that my entire opening statement be part of the record.

Chairman HERGER. Without objection.

Mr. STEARNS. I appreciate the opportunity to speak to the Committee regarding H.R. 804. I also want to thank the Ways and Means Committee members who are all supporting this effort, Mr. Crane, Mr. Lewis, Mr. Jefferson, Ms. Thurman, Ms. Johnson, Mr. Ramstad, in addition, our distinguished colleague, Mr. Watts, for his support.

One of the most effective steps Congress could take to spur charitable giving would be to repeal the excise tax on net investment income, which is part of these private foundations.

Private foundations are subject to a 2 percent excise tax on their net investment income. Private foundations generally must make annual distributions for charitable purposes equal to roughly 5 percent of the fair market value of the foundation's endowment assets. The excise tax paid acts as a credit in reducing the 5 percent requirement.

This law represents several problems. I will briefly give you three reasons why we need the repeal.

It was enacted in 1969, Mr. Chairman, as a way to offset the cost of government audit of these organizations. However, the audits since that time have gone down dramatically. In 1990, the excise tax raised about $204 million; now it is up to $500 million. Yet the audits themselves are dropping from 1,200 down to 191, so the Internal Revenue Service (IRS) has all this extra money.

Number two, the Joint Committee on Taxation (JCT) recognized in its April 2001 recommendation that we need to simplify the Tax Code, particularly dealing with these private foundations. The actual complexity of coming up with the excise tax based upon the investment income is very onerous. And they have to, many times, go to the IRS to try to understand it. There is additional complexity in the actual calculation. They have to go back and forth with the IRS.

And lastly, the tax is inequitable because other tax-exempt organizations are also audited, however, Mr. Chairman, private foundations are the only tax-exempt organizations that are, in fact, taxed.

So I urge you, Mr. Chairman, to repeal the excise tax. We reduced it in 1978. We reduced it in 1984. And we can repeal it in the year 2001 as part of this package on H.R. 7. We have 58,000 private foundations. By doing this, there will be $500 million extra money that will be available for charitable giving.

So my bill, in effect, is brand new money, providing $500 million a year. So I respectfully urge the Committee to include the repeal of the excise tax in the appropriate legislation.

And I thank you, Mr. Chairman.

[The prepared statement of Mr. Stearns follows:]

Statement of the Hon. Cliff Stearns, a Representative in Congress from the State of Florida

Thank you Mr. Chairman.

I first want to thank you for allowing me the opportunity to appear before the Subcommittee this morning regarding HR 804—a bill to repeal the excise tax on the net investment income for private foundations. I would also like to thank those Ways and Means Committee Members who are supporting this effort: Mr. Crane, Mr. Lewis, Mr. Jefferson, Ms. Thurman, Ms. Johnson, and Mr. Ramstad. In addition, I also want to thank my colleague Mr. Watts for his support.

One of the most effective steps Congress could take to spur charitable giving would be to repeal the excise tax on net investment income. As you know, private foundations generally are subject to a 2 percent excise tax on their net investment income. The tax can be reduced to 1 percent in any year in which the foundation's percentage of distributions for charitable purposes generally exceeds the average percentage of its distributions over the five preceding taxable years.

Private foundations generally must make annual distributions for charitable purposes equal to roughly 5 percent of the fair market value of the foundation's endowment assets. The excise tax paid acts as a credit in reducing the 5 percent requirement.

This law presents several problems.

First, the original need for the tax no longer exists. The tax was originally enacted in the Tax Reform Act of 1969 as a way to offset the cost of government audits of these organizations. However, excise tax revenues have steadily climbed and IRS audits of private foundations have steadily dropped over the past decade. In 1990, the excise tax raised $204 million and the IRS conducted 1,200 audits of private foundations. In 1999, the last year for which figures are available, the excise tax raised $499.6 million with the IRS conducting 191 audits.

Congress reduced this tax in 1978 and 1984. In both instances it was noted that the adjustments were necessary because the revenues collected from the tax were more than what was necessary to fund IRS activities regarding these foundations. Evidence of this is found in the current year budget for the IRS regarding exempt organizations, which is about $58 million.

Second, as the Joint Committee on Taxation recognized in its April 2001 recommendations to simplify the tax code:

> The excise tax based on investment income creates complexity because every private foundation, except exempt operating foundations, is required to calculate net investment income, which is a technical and difficult calculation. Indeed, the IRS often has to rule whether certain income is includible in the calculation of net investment income. In addition, the two-tier nature of the tax means that private foundations have to calculate their average percentage payout for the base period and decide whether to increase charitable distributions in order to obtain the lower rate. Solely because of this excise tax, foundations are required to make quarterly estimated tax payments. Additional complexity exists for taxable private foundations because such foundations are required to calculate the tax on net investment income as well as any unrelated business income tax that would have been owed if the foundation were a taxable foundation.

Finally the tax is inequitable as other tax-exempt organizations are also audited, however, private foundations are the only tax-exempt organizations that are, in fact, taxed.

Mr. Chairman, repeal of the excise tax would result in an increase in qualifying distributions of hundreds of millions of dollars every year, boosting the ability of charitable organizations to address national priorities across the range of fields that are the focus of some 58,000 private foundations. The state of Florida ranks 11th in the country in total foundation giving with over 2,000 foundations. Roughly 90% of those are private foundations.

I respectfully urge the committee to include repeal of the excise tax in appropriate legislation.

Thank you and I am happy to answer any questions.

Chairman HERGER. Thank you very much, Mr. Stearns. And with that, we will go and vote and return as soon as possible. And this hearing stands in recess.

[Recess.]

Chairman HERGER. The Subcommittee on Human Resources and Select Revenue Measures will reconvene. And with that, we will continue with our witnesses. Mr. Nadler from New York, please.

STATEMENT OF THE HON. JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. NADLER. Thank you very much. I want to thank the Chairs and ranking members for the opportunity to address an issue that is of such great importance to this Nation and to the preservation of our first freedom.

It is important to stress that both government and religious organizations have a long and productive history of providing needed services to those most in need in our society. What is in question is whether or not the nature of that relationship should be radically altered. And if so, what are the consequences? What would

the consequences be for the rights of our most vulnerable neighbors?

Let me start by saying that I support the proposal to permit tax deductions for charity for nonitemizers. That is not included in the charitable choice issue.

There are three issues with respect to charitable choice.

First, should we permit discrimination in employment or in the receipt of social services given out by religious organizations with Federal money? Religious organizations today are exempt from the prohibition against employment discrimination with respect to Title VII of the Civil Rights Act on the basis of religion in functionaries of the organization. No one is going to tell a House of Worship, you have to permit a woman priest or a woman rabbi.

The question is, should we alter the law to permit discrimination on the basis of religion or sex in who ladles out the soup at the Federally funded soup kitchen run by the church, or who is entitled to have the soup? Should we allow discrimination on the basis of religion in that? And I submit that the answer to that is no.

And that is the first of the three major provisions of the charitable choice bill before us: that for the first time, the law would permit that kind of discrimination in a publicly funded program.

The second question is, should we permit proselytization, or religious propaganda, or worship or training as a condition for the receipt of Federally funded services through a faith-based organization? Today, if the Fifth Avenue Baptist Church wants to set up the Fifth Avenue Baptist Church Soup Kitchen, Inc., they can certainly do so. But they cannot say, as a condition of coming to lunch, poor people have to listen to a religious lecture or have to engage in prayer.

Under this legislation, I greatly fear that the churches would be able to do that. They can certainly do that now with their own money. For example, the Salvation Army does what I just described.

There is nothing wrong with that, as long as it is not the taxpayers' money. Madison's view, as expressed in "Memorial and Remonstrance," is that it is a violation of individual religious liberty to compel a citizen to support another faith. This view is still valid, whether it applies to the hiring of teachers in his time or in funding pervasively sectarian activities today.

And in addition to which, there is the insistence in H.R. 7 that there must be funding for a secular alternative in order to allow that kind of religious domination, in effect, of the social service. But the fact is, we know that very often the alternative will not exist in the real world. It would require a huge infusion of funds. In fact, the President's budget cuts down on funds for many of these social programs instead of increasing it. And in the real world, those funds wouldn't be available.

To quote Professor Laycock, one of the majority witnesses at the Subcommittee on the Constitution's hearings on this subject: To permit this kind of activity without a secular alternative really being available in every local community would be a "fraud." And we know that would not really happen.

The third objection is the question of the funding of pervasively sectarian institutions. Today, the Fifth Avenue Baptist Church

may compete, and it is perfectly proper that it competes on an equal footing, with the Fifth Avenue Block Association for the grant of Federal funds to run the soup kitchen or the homeless shelter or any such program. However, it has to set up a separate organization to do it so that the funds are not commingled.

To allow the commingling of the funds without a separate organization would lead to, (A) government audit and regulations of the churches, which is a very dangerous proposition; and, (B) it would lead to allocation fights.

The most divisive thing you have in Congress, as you know, is should New York get half a percent more of transportation funds than Pennsylvania, half a percent less, or vice versa. I would hate to see this country torn apart by an annual allocation fight: Should the Methodists get half a percent more and the Presbyterians a half percent less and the Catholics a quarter percent more?

That kind of dispute has torn apart many foreign countries. We do not need that in the United States.

And that would be, I suspect, a result of this legislation, if we are not very careful.

I genuinely fear for religious autonomy in a world without the Lemon test and without the Sherbert rule. Religious institutions are being coaxed into a devil's bargain.

In the wake of Boerne, Congress's efforts to protect such protections by statute seem to have come to very little. The day will come when having permitted excessive entanglement between religious institutions and the government, there will be no protection for religion when government flexes its muscles.

I do not understand why some of my conservative colleagues suddenly have so much trust in big government that they are willing to take such a phenomenal risk.

I thank you, Mr. Chairman.

[The prepared statement of Mr. Nadler follows:]

Statement of the Hon. Jerrold Nadler, a Representative in Congress from the State of New York

I want to thank the Chairs and Ranking Members for the opportunity to address an issue that is of great importance to this nation and to the preservation of our first freedom. As the Ranking Democratic Member of the Judiciary Committee's Subcommittee on the Constitution, I have been very involved in the examination of this legislation, and of other proposals to alter the manner in which religiously-affiliated institutions and faith-based programs interact with government.

I think it is important to stress that both government and religious organizations have a long and productive history of providing needed services to those most in need in our society. I do not think that anyone is today arguing that these relationships ought to be severed or curtailed. What is in question is whether the nature of that relationship should be radically altered, and if so, what the consequences would be for the rights of the most vulnerable of our neighbors.

Recently, our Subcommittee examined the current state of the law which is, I think it is fair to say, in great flux. Certainly the split opinion by the Supreme Court in *Mitchell v. Helms* demonstrates just how closely divided the Justices are on the very difficult issues which surround any entanglement between government and religion. While my sympathies are well known to my colleagues, the difficult issues with which the Court has been grappling—how much religious activity should be permitted in a publicly funded program, which programs should be allowed to participate, what are the rights of program participants and employees vis-a-vis the a publicly funded benefit, how much separation, if at all, should there be between the clearly sectarian and the clearly secular functions of an agency—are not trivial. We would do a disservice to the nation if we simply wished these difficulties away and pretended that they did not exist.

Madison's view, as expressed in his *Memorial and Remonstrance,* that it is a violation of individual religious liberty to compel a citizen to support another faith, is still valid, whether it applies to the hiring of teachers of religious instruction (as was the case in Madison's time) or in funding other pervasively sectarian activities, as Mr. Justice Thomas and three other Justices hope to permit. We are treading on very shaky ground and it is perhaps a good time to reflect on the fact that the Establishment clause exists not, as some have argued, to protect government from religion, but to protect religion from government and to protect the conscience of each individual from the prospect of anyone using the power or resources of the state to coerce them in any way on the most fundamental matters of belief.

Where government funding is used, issues of discrimination in employment or against potential program participants, must be adequately addressed. As the Supreme Court pointed out nearly 20 years ago in the *Bob Jones University* case, which has been the subject of an alarming epidemic of amnesia over the last year, the United States does have a compelling interest in eliminating all vestiges of discrimination on the basis of race, and I would add, on other grounds that the Congress, as well as state and local governments, have found fit to include. Public money comes from every American taxpayer, regardless of race, religion, creed, national origin, disability, gender, sexual orientation or identity, and no American should be denied employment opportunities or the ability to receive government funded services on those bases.

There is a tension in the various proposals we have seen between religious autonomy, guaranteed to the participating programs, and the rights of participants and employees to be free from discrimination or proselytization. We clearly want religious institution to be free from government meddling. We do not want the government to tell a house of worship who can officiate at religious exercises or who can teach the faith. No one wants to tamper with that fundamental principle. Congress, in enacting Title VII of the Civil Rights Act of 1964 carved out an exception for religious institutions for this reason.

But when religious institutions qua religious institutions become the purveyors of social services, what happens where there is a conflict? How are the rights of the religious institution, the employee and the program participant balanced? The legislation is woefully inadequate in addressing these problems which go to the heart of the religious liberty and civil rights interests of all concerned. It is especially a problem when the service government purchases from a faith-based organization is not purely secular in nature.

For example, there are drug treatment programs run by the Nation of Islam or by some Christian groups, and I am sure by other faiths, where the religious activity and the religious conversion of the individual, is the cure for addiction. To say that we are funding a secular service when the people who are trying to beat drug addiction, people who are about as vulnerable as anyone in this society, are going to a program which tells them that they must accept a particular faith in order to get their lives on track, is pure fiction. Similarly, where you allow commingling of funds and activities, so that food is provided with public funds, then there is a break for prayer, and then the secular activity is continued strains credulity. It is an invitation for abuse of the public fisc and for those who need help the most and who are least able to object.

H.R. 7, incidentally, does say that a secular alternative must be provided to anyone seeking a particular service who requests one. Prof. Laycock, and other Majority witnesses, agreed that, in order to protect the religious liberty of program participants, this must be a part of the plan. He said that without guaranteeing such a secular alternative, the program would be a "fraud." But how does this square with reality? The bill can say it, but it provides no new funds for the alternative. In fact, the President's budget necessitates cuts in many of these programs, and many of those programs do not provide services to anyone who needs them now. Have any of you ever tried to get a constituent who wanted to clean up into drug treatment? There are long waiting lists for these programs which receive both public and private funds. Will Congress impose yet another unfunded mandate on state and local governments, or is this language meaningless? The Rev. Donna Lawrence Jones, an African American Methodist Minister from Philadelphia, who runs a faith-based program, and who was a Majority witness before our Subcommittee in support of H.R. 7, was very blunt when asked about the effectiveness of faith based programs. She told the Members that Congress would need to provide the necessary funds for these services if we wanted these programs to succeed. G-d can work miracles, but soup kitchens need money to buy soup, and drug treatment programs need to hire qualified counselors and pay rent.

I think many members approve of the various tax incentives for individuals to make donations to charitable programs, but these were not included in the big tax

cut bill the President just signed. What was included was an elimination of the estate tax which has provided a tremendous incentive for the wealthy to engage in estate planning which included charitable gifts. Will we have the money to do all of this, and will it be a net gain for charities after the elimination of the estate tax? I hope this Committee, which has jurisdiction over such matters, considers these questions carefully and reports to the rest of us what you have found.

Finally, on the subject of religious autonomy, I genuinely fear for religious autonomy in a world without the Lemon test and without the *Sherbert* rule. Religious institutions are being coaxed into a devil's bargain. There is precious few constitutional restrictions on the rules government may now apply to religious institutions. In the wake of *Boerne*, Congress' efforts to provide such protections by statute—an effort in which three of our witnesses were key players—seems to have come to naught. The day will come when, having permitted excessive entanglement between religious institutions and the government, there will be no protection for religion when government flexes its muscles. I do not understand why my conservative colleagues suddenly have so much trust in big government that they are willing to take such a phenomenal risk.

Chairman HERGER. Thank you very much, Mr. Nadler. And now we will hear from the gentleman from Virginia, Mr. Scott.

STATEMENT OF THE HON. ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. SCOTT. Thank you very much, Mr. Chairman, Mr. Chairman, and ranking members, members of the Committee.

I am pleased to have the opportunity to appear before you today to share my concerns regarding the charitable choice portion of H.R. 7.

I am not aware of much controversy about the other provisions of that bill and the other bills. I would just want to focus on charitable choice.

Religiously affiliated organizations, including Catholic Charities, Lutheran Services, Jewish Federations, and a vast array of smaller faith-based organizations already sponsor government programs under current law without charitable choice. And contrary to President Bush's assertions, I am not aware of anyone who opposes these organizations operating publicly funded programs and providing services.

They are funded like all other private organizations are funded. They are prohibited from using taxpayer money to advance their religious beliefs, and they are subject to civil rights laws.

Now, before you can intelligently discuss the pros and cons of charitable choice, you first have to answer one fundamental question, and that is: Are you funding the faith or not?

I am not surprised that the administration isn't here, because they have given conflicting answers to that question.

At Notre Dame, for example, the President said: government should never fund the teaching of faith, but should support the good works of the faithful.

The bill itself prohibits Federal funds being used to pay for proselytization.

Now, if government is not funding the faith, then there is no need to discuss the preservation of the religious character of the sponsoring organization; there is no need to provide separate secular services elsewhere; there is no need to provide for discrimination in employment. In fact, there is no need for charitable choice.

If government is not funding the faith, organizations can receive funding without charitable choice just like Catholic Charities does now.

Unfortunately, the provision in charitable choice guaranteeing the right to retain the religious character of the sponsor also guarantees that they will be promoting religious views. And the prohibition against using Federal funds for proselytization does not prevent volunteers from taking advantage of the captured audience and converting the Federal program into a virtual worship service.

Furthermore, many supporters of charitable choice acknowledge that the religious experience is exactly what is being funded.

At a forum a few months ago, the junior Senator from Pennsylvania, the main sponsor in the Senate of charitable choice, criticized me for not recognizing that with some drug rehabilitation programs, religion is a methodology.

John DiIulio indicated in a recent interview with the Associated Press that pervasively religious programs could apply for directed grants. At recent congressional hearings, sponsors explained that their programs are successful because of the religious nature of the program.

Yet, how are we to conform these statement to the President's government should never fund the teaching of faith but should support the good works of the faithful, or the Department of Justice testimony last week that said absolutely no religious activity, funded privately or not, could occur during the government program.

Now, Mr. Chairman, you have to answer that question: Are you funding the faith or not?

If not, you don't need charitable choice. If so, then you have to candidly address the Establishment Clause of the First amendment in having government officials pick and choose between religions to see whose faith will be advanced during the government-sponsored program.

My complete remarks outline an analysis of how this would work with vouchers, and you would have a different analysis. But here, you are directly picking the program to be funded.

Now, Mr. Chairman, there is another important issue, and that is, should we allow employment discrimination in a Federally funded program? Mr. Chairman, you remember that there was a time when some Americans, solely because of their religion, were not considered qualified for certain jobs.

Before the Civil Rights Acts of the sixties, people of the certain religions were routinely discriminated against when they sought employment. Sixty years ago this month, President Roosevelt established a principle in an executive order that you can not discriminate in government defense contracts based on race, religion, color, or national origin. And the civil rights laws of the sixties outlawed schemes in which job applicants were rejected solely because of their religious beliefs.

Now, some of us are, frankly, shocked that we would even be having a debate over whether the sponsor of a Federally funded program can discriminate in hiring, but then we remember that the passage of the civil rights laws of the sixties was not unanimous, and we have to use charitable choice to redebate basic antidiscrimination laws.

I believe that publicly funded employment discrimination was wrong in the forties and sixties, and it is still wrong.

Some of us have suggested that organizations should be able to discriminate in employment based on those that share their vision and philosophy. Under current civil rights laws, you can discriminate on views on environment, abortion, gun control, whatever you want, but because of our sorry history of discrimination against certain Americans, we had to establish protected classes. And under present law, you cannot discriminate against an individual based on race, sex, national origin, or religion.

Now, the President and supporters of charitable choice have promised to invest needed resources in our inner cities, but it is insulting to suggest that you can't get those investments unless you turn back the clock on civil rights.

Now, there are a lot of other issues that I just want to mention as issues.

You indicated that we want to see how this thing has been implemented under present law. Well, it hasn't been implemented under present law because President Clinton's administration viewed this as unconstitutional, and that is why they have not been implemented.

You mentioned Vice President Gore. I don't know exactly what his comments meant, but the Democratic platform that he ran on specifically said that faith-based organizations ought to be funded, but not with discrimination and not with proselytization.

There are a number of other issues, whether or not this will help small organizations. Small organizations, civic or religious, are still going to have the problems. They are going to have to still apply for a grant. They are going to still have to develop the program and implement it with Federal regulations. They are going to subject to audits.

There is no technical assistance in charitable choice, which would help, or no grants to tell them how to run an after-school programs and that kind of thing. We have licensing problems. The privatization issue, what happens, since there is no money in it, if the church gets the contract and the government gets defunded as a result, what happens to those employees?

And I want to introduce letters from the Episcopal Church, the Congress of National Black Churches, and a list of a 1,000 religious leaders who support that same position, don't want discrimination, don't want proselytization during the government contracts.

[The following was subsequently received:]

Statement of the Episcopal Church, Office of Government Relations

EPISCOPAL CHURCH ESTABLISHES POLICY ON PUBLIC FUNDING OF "FAITH-BASED" SOCIAL SERVICES

Washington, D.C.—The Episcopal Church issued a resolution supporting the "longstanding practice of receiving public funding for faith-based social services so long as such programs do not discriminate or proselytize as part of receiving services."

"The purpose of this resolution is to articulate the Episcopal Church's strong conviction on the policy of public funding of faith-based social services," said Frank T. Griswold, Presiding Bishop and Primate of the Episcopal Church. "Receiving public moneys from local, State or Federal Governments is nothing new to the Episcopal Church or other faith-based

groups for that matter. I am pleased the questions around this issue have brought serving the needs of others to our public discourse."

The Executive Council of the Episcopal Church, USA, meeting in Salt Lake City approved the statement June 11, and also called on the Federal Government to increase public funding for programs aimed at critical human needs. The statement also requested that the government improve the delivery of assistance to faith-based organization by simplifying paperwork requirements, providing timely payment for services, and appropriate technical assistance.

The Church supports proposals to use the Tax Code to create incentives for increasing charitable giving. The recent tax bill signed by President Bush last week did not include tax incentives to non-itemizing tax payers. Tax incentives proposals, supported by almost every major faith and denomination, were dropped in the reconciliation process by House and Senate negotiators.

Parishes, diocese, and Episcopal-related service providers were urged to consider carefully the ramifications of accepting public moneys and explore separate incorporation for the delivery of social services with public funds. The Church also called on the business community to create partnerships with faith-based organizations and parishes as part of their social responsibilities.

While supporting the receipt of public money in some cases for social services, the statement also calls for secular, non-religiously affiliated programs to be available in the same community should proselytizing and religious discrimination exemptions—allowed to religious groups—be permitted in a program as in current charitable choice law or in President Bush's faith-based initiatives.

Tom H. Hart of the Episcopal Church's Office of government Relations in Washington, D.C. said, ***"This position balances the increasing need for social services with fairness and accountability in the use of public dollars."***

"The Church recognizes that discrimination has no place in the delivery of social services," Hart said. "The government should and certainly can expand the opportunity parishes and faith-organizations have to help those in need with public funds, but should clearly put new money behind those proposals and critical existing programs."

[The attachments are being retained in Committee files.]

Statement of the Congress of National Black Churches, Inc.

PRESS RELEASE

For Immediate Release
Contact: Danita Ferguson Oliver
(202) 371–1091

Leaders of Historic Black Denominations Meet in Washington to Discuss President Bush's Faith-Based Initiative

Washington, D.C.—Among the Black clergy that met with the President in Washington on Monday, March 12 to share perspectives about Bush's faith-based initiative were denominational leaders from the major Black historic denominations. These denominational leaders are Members of the Congress of National Black Churches, Inc., (CNBC) an ecumenical coalition of the eight major historic black denominations. Through denominational collaborative efforts, CNBC provides programs, technical assistance and training, with government and private funds, to support, strengthen and sustain the Black community.

CNBC therefore supports the concept of a faith-based initiative that facilitates and supports the efforts of faith-based groups through the distribution of government funds. "The President's 'faith-based' initiative," stated CNBC chairman Bishop Cecil Bishop of the African Methodist Episcopal Zion Church, "raises issues of concern. . . . We met on Monday to gather additional information on this initiative." Bishop added, "We also wanted to make sure the President knows who the leaders of the African American denominations are."

Noting that CNBC Members as a collective, nor as the heads of the individual major historic black denominations, have not made a statement in support of Bush's proposed faith-based initiative, Bishop stated, "Denominational leaders would not make a statement of support without consultation with their communions."

CNBC denominational Members agree however that they could not support legislation that allows for: discrimination based on creed; or for the responsibility of government to be redefined where that responsibility is placed on faith-based organizations.

"The church, particularly the black church," Bishop added, "has historically been the protector and advocator for the disenfranchised and disadvantaged." CNBC is committed to providing programs and services to disenfranchised communities and

persons most in need of charitable support. "CNBC supports partnerships that maintain the dignity and proper role of all entities striving to address the needs of our most vulnerable population," Bishop stated. "Therefore," he added, "We would be opposed to legislation, of any kind, that derails the independence of black churches, limits their freedom or silences its prophetic voice." For churches to successfully retain their independence, CNBC Members agree that top-notch technical assistance and training prior to entering into a contractual relationship with the Federal, state and local governments is needed.

In addition to Bishop, other CNBC Members present at the meeting were: Dr. William Shaw, President, National Baptist Convention, USA, Inc.; Bishop Charles Helton, Presiding Prelate for the 7th Episcopal District, Christian Methodist Episcopal church; Bishop T. Larry Kirkland, Ecumenical Officer for the African Methodist Episcopal Church; and Dr. S. Thurston, Vice President, National Baptist Convention of America, Inc.

Founded in 1978 and based in Washington, D.C., CNBC is an ecumenical coalition of eight major historically African American denominations: African Methodist Episcopal; African Methodist Episcopal Zion; Christian Methodist Episcopal; Church of God in Christ; National Baptist Convention of America, Inc.; National Baptist Convention USA, Inc.; National Missionary Baptist Convention of America; and Progressive National Baptist Convention, Inc. Together, these denominations represent 65,000 Member churches and a congregation Membership of more than 20 million people. CNBC's mission is to foster Christian unity, charity and fellowship and to collaborate in ministries, which promote justice, wholeness, fulfillment, and affirm the moral and spiritual values of faith.

An Open Letter to President Bush and Congress From America's Clergy

MAY 16, 2001

Dear President Bush and Members of the U.S. Congress:

We welcome the goal of empowering communities of faith to work effectively with government and other civic institutions. As leaders from traditions representing the diversity and breadth of the religious landscape in our Nation today, we affirm the critical role of faith as a source of healing in our society. Whether by commandment from Holy Scriptures or lessons from prophets and messengers, we share a calling to care for those who are suffering, to help those who have been left behind and to embrace those who have been forgotten.

It is out of our commitment to the success of such faith-based enterprises that we are writing today to express our serious reservations about the provisions commonly referred to as "Charitable Choice" in the Administration's Faith-Based Initiative. The "Charitable Choice" proposals would inject government dollars and bureaucratic oversight directly into houses of worship and other pervasively religious organizations. We believe this portion of the Faith-Based Initiative poses numerous dangers to both religion and government.

These provisions would entangle religion and government in an unprecedented and perilous way. The flow of government dollars and the accountability for how those funds are used will inevitably undermine the independence and integrity of houses of worship. Allowing government officials to pick and choose among religions for limited government funds will foster an unhealthy competition between religions and could lead to an insidious form of political abuse. Exempting government-funded religious institutions from employment laws banning discrimination on the basis of religion weakens our nation's civil rights protections for those seeking to provide assistance to those in need.

Such new legislation is not necessary. For decades many houses of worship have set up separate religiously affiliated institutions to perform government-funded social services, a system that has protected both the autonomy of houses of worship and the integrity of government programs.

Partnerships between religion and government must be undertaken with great caution so as not to undermine the very integrity and freedom that allows both the followers and the institutions of religion to practice and keep faith in our Nation.

We urge you to protect the sacred role of religion in our nation by rejecting this avenue of infusing government funds into America's religious institutions.

Sincerely,

Dr. Gary L. Abbott Sr. First Baptist Church, Milledgeville, GA
Rabbi Joel N. Abraham, Plainfield, NJ
Rabbi Arthur Abrams, Temple Beth Shalom, Sun City, AZ
Rev. Amos Acree Jr. Network of Religious Communities, East Aurora, NY
Rev. Marjorie Adams, First Unitarian Church, Austin, TX
Rev. L.T. "Red" Adams, First Unitarian Church, Austin, TX

Rev. Lesley M. Adams, St. Johns Chapel, Geneva, NY
Dr. Charles G. Adams, Pastor, Hartford Memorial Baptist Church, Detroit, MI
James R. Adams, President, The Center for Progressive Christianity, Cambridge, MA
Rabbi David Adelson, East End Temple, New York, NY
Rev. Dr. David W. Adkins, Starling Avenue Baptist Church, Martinsville, VA
Rabbi Richard D. Agler, Congregation B'nai Israel of Boca Raton, Boca Raton, FL
Rabbi Daniel S. Alexander, Congregation Beth Israel, Charlottesville, VA
Rev. Denise M. Allen, Temple of Isis, Los Angeles, CA
Rabbi Daniel R. Allen, President, Masorti Foundation for Conservative Judaism in Israel, New York, NY
Rev. George P. Aloser, Roman Catholic, Novi, MI
Rabbi Rebecca Alpert, Member, Mishkan Shalom, Philadelphia, PA
Rev. Dr. David A. Ames, Episcopalian, Providence, RI
Rev. Ron J. Anderson, Morningstar Community Church, Worcester, MA
Dr. Fred W. Andrea III, First Baptist Church, Aiken, SC
Rev. A.F. Archer, Priest, St. George Eastern Orthodox Church, Pharr, TX
Rev. Charles W. Archibald, Albuquerque (U.U.C.), Durango, CO
Rabbi Melanie Aron, Congregation Shir Hadash, Los Angeles, CA
Rabbi Haim Asa, Temple Beth Tikvah of Northern Orange Co. Fullerton, CA
Dr. H. Mark Ashworth, Ebenezer Baptist Church, Monticello, FL
Rev. Jay Atkinson, Unitarian Universalist Church, Studio City, CA
Dr. Dennis R. Atwood, Webster Groves Baptist Church, St. Louis, MO
Rev. Jack Averill, First Baptist Church, Olean, NY
Rev. Dr. Douglas R. Baer, Interim Pastor, McKinley Presbyterian Church, Champaign, IL
Rev. David Bahr, Archwood United Church of Christ, Cleveland, OH
Dr. Raymond Bailey, Seventh and James Baptist Church, Waco, TX
Rev. Marcia B. Bailey, Central Baptist Church, Wayne, PA
Rev, Steven Baines, Baptist, Washington, DC
Rabbi Kerry Baker, Congregation Kol Halev, Austin, TX
Dr. Robert C. Balance, Heritage Baptist Church, Cartersville, GA
Rev. David T. Ball, PhD, Denison University, Granville, OH
Rev. Kim Keethler Ball, First Baptist Church, Granville, OH
Rev. William E. Ballard, United Methodist Church, Eagle Grove, IA
Dean Isam E. Ballenger, Baptist Theological Seminary at Richmond, Richmond, VA
Rev. D. Mark Bariaon, Central Presbyterian, Louisville, KY
Rabbi Stephen F. Barrack, Temple Beth Shalom,
Pastor Michael Barron, Eastern Oklahoma Presbyterian Church (USA), Broken Arrow, OK
Rev. S. John Bartley, St. John Baptist Church, Atlanta,GA
Rev. Mr. Randol G. Baston, Catholic Diocese of Davenport, IA
Dr. John Mark Batchelor, White Oak Baptist Church, Clayton, NC
Dr. Dennis N. Bazemore, First Baptist Church, Wallace, NC
Rabbi Brian K. Beal, Temple Shaari Emeth, Manalapan, NJ
Rev. Brent Beasley, First Baptist Church, Eagle Lake, TX
Rev. Paul Beckel, Southwest Unitarian Universalist Church, Strongsville, OH
Rev. Dr. Randolph W.B. Becker, Williamsburg Unitarian Universalists, Williamsburg, VA
Rev. Jody Anne Becker, St. Anselm Church, Ross, CA
Rabbi Shelley Kovar Becker, Temple Hesed, Scranton, PA
Rev. Wells E. Behee, Unitarian Universalist Church, New Madison, OH
Rabbi Martin P. Beifield, Jr., Congregation Beth Ahabah, Richmond, VA
Rabbi Marc J. Belgrad, Congregation Beth Am, Buffalo Grove, IL
Rev. Dr. Mark L. Belletini, First Unitarian Universalist Church, Columbus, OH
Rev. William R. Belli, Retired, Calvary Baptist Church, Norristown, PA
Rev. Bonnie L. Benda, Canaeron United Methodist Church, Denver, CO
Rev. Bonnie L. Benda, Canaeron United Methodist Church, Denver, CO
Rabbi James M. Bennett, Temple Beth El, Charlotte, NC
Dr. Candace R. Benyei, Teaching Elder, The Congregation of the Way, Redding, CT
Rabbi Peter S. Berg, Temple Emanu-El, Dallas, TX
Rev. Charles V. Bergstrom, Lutheran (ELCA), West Yarmouth, MA
Rabbi Michael Berk, Union of American Hebrew Congregations, San Francisco, CA
Rabbi William C. Berk, Temple Chai, Phoenix, AZ
Rabbi H. Phillip Berkowitz, Temple Beth Or, Washington Twp, NJ

Rabbi Marc E. Berkson, Congregation Emanu-El B'ne Jeshurun, Milwaukee, WI
Rabbi Alvin K. Berkun, Tree of Life Congregation, Pittsburgh, PA
Rabbi Alan Berlin, Temple Solel, Paradise Valley, AZ
Rabbi Donald R. Berlin, Union of American Hebrew Congregations, Washington, DC
Rev. Charline Berry, First Baptist Church, Gaithersburg, MD
Rev. Gina Bethune, University Baptist Church, Austin, TX
Rev. Dr. Larry Bethune, University Baptist Church, Austin, TX
Rabbi Jonathan Biatch, Beth El Hebrew Congregation, Alexandria, VA
Rev. Leonard B. Bjorkman, PhD, Presbyterian Church (USA), Syracuse, NY
Rev. Lee Blackburn, Chaplain, United Church of Christ, Kansas City, KS
Rev. Elaine L. Blanchard, 6th Avenue United Church (United Church of Christ), Denver, CO
Dr. Michael Bledsoe, Riverside Baptist Church, Washington, DC
Rabbi Barry H. Block, Temple Beth-El, San Antonio, TX
Rabbi Irving Bloom Reform Rabbi, Mobile, AL
Rev. Dr. James E. Bodman, Minister, Unitarian Universalist Church of Orange County, Anaheim, CA
Rev. Whitney S. Bodman, UIA, Franklin, MA
Rev. Dr. Jack H. Boelens, Presbytery of the New Covenant, Houston, TX
Rev. Richard Bolin, La Canada United Methodist Church, La Canada, CA
Pastor Bruce M. Bowen, Colesville Presbyterian Church, Silver Spring, MD
Rabbi Bradd, H. Boxman, United Jewish Center, Danbury, CT
Rev. David Boyd, St. Michael the Archangelv Episcopal Church, Lexington, KY
Rev. John H. Brand, N.Texas Conference, United Methodist Church, Austin, TX
Rev. Morris H. Bratton, United Methodist Church, Kingsland, TX
Rev. Dr. G. Stanford Bratton, Network of Religious Communities, Buffalo, NY
Rev. F. David Breckenridge, Rolling Hills Baptist Church, Fayetteville, AR
Rev. T. Edwards Breed, St. Andrew Lutheran Church, Cedar Rapids, IA
Rev. Dr. Sylvanus G. Brent, Associate Minister, Plymouth Congregational UCC, Washington, DC
Dr. Luther G. Brewer, Greenwood Forest Baptist Church, Cary, NC
Rev. Roger Brewin, Minister, First Unitarian Church, Hobart, IN
Rev. James R. Bridges, Parish Minister, Unitarian Universalist Society of Orange County, Rock Tavern, NY
Jeff Briere, Intern Minister, Unitarian Church of Hinsdale, Hinsdale, IL
Rev. Bryan Brock, First Baptist Church, Gaithersburg, MD
Rev. Ken Brooker-Langston, Disciples of Christ, Annapolis, MD
Rabbi Jerald M. Brown, Temple Ahavat Shalom, Northridge, CA
Very Rev. Donald G. Brown, Trinity Episcopal Cathedral, Sacramento, CA
Pastor Dean Brown, St. John's UMC, Sebring, FL
Rev. Stephen L. Brown, Church of the Nazarene, San Bruno, CA
Dr. W. Steven Brown, First Baptist Church, Walterboro, SC
Rev. Martha Brown, Associate Minister, Henson Valley Christian Church, Fort Washington, MD
Rev. Hugh E. Brown III, Episcopal Priest, Protestant Chaplain, Georgetown University, Washington, DC
Rev. Michael W. Brown, Unitarian Universalist, Peoria, IL
Rev. Anne Broyles, Malibu United Methodist Church, Malibu, CA
Rev. David A. Brynelson, First Baptist Church, Paola, KS
Rev. Daniel Budd, First Unitarian Church, Cleveland, OH
Rev. Jim Bundy, Sojourners United Church of Christ, Charlottesville, VA
Rev. Kenneth E. Burke Jr., Pastor, East Washington Heights Baptist Church, Washington, DC
Jim Burklo, Campus Minister, United Campus Christian Ministry at Stanford University, Stanford, CA
Rev. John P. Burns, University Baptist Church, College Park, MD
Rev. Roanald C. Burnsworth, Judson Baptist Church, Belle, WV
Dr. Michael J. Burr, Community Church of Issaquah, Issaquah, WA
Rabbi Marcus L. Burstein, Temple Rodef Shalom, Falls Church, VA
Rev. Franklyn Busby, D.Mus, Washington Plaza Baptist Church, Reston, VA
Rabbi John L. Bush, Temple Anshe Hesed, Erie, PA
Rev. Daniel L. Buttry, First Baptist Church, Dearborn, MI
Roger Butts, Intern Minister, UU Church of Annapolis,, Annapolis, MD
Rev. Sally Bystroff, Third Presbyterian Church, Troy, NY
Rev. Mark S. Caldwell, PhD, Baptist, Nashville, TN
Rev. Dr. Stanley N. Califf, Our Saviour's Lutheran Church, Orange, CA
Rabbi Paul D. Caplan, Temple Anshe Sholom, Olympia Fields, IL

Pastor William Carcamo, Iglesia Bautista Jerusalem, West Hills, CA
Rev. Joseph G. Carey, Faith Presbyterian Church, Dunedin, FL
Rev. Barbara Carlson, (U.U.C.), Bloomington, IN
Rev. Robert W. Carlson, D.Min. Chair, Episcopalian, Silver Spring, MD
Rev. Tracy A. Carol, Community Christian Church (Disciples of Christ), Camdenton, Missouri
Rabbi Kenneth Carr, Congregation Beth Am, Los Altos Hills, CA
Rev. Brad Carrier, Unitarian Universalist Fellowships, Grants Pass & Bend, OR
Rev. Charles C. Carrimore Jr., Roberdel Baptist Church, Rockingham, NC
Rev. Colleen Carrol, Community Christian Church (Disciples of Christ), Camdenton, MO
Dr. Cornelius Carter Jr., Canaan Baptist Church, Washington, DC
Rev. Mark S. Caruana, Tabernacle Baptist Church, Utica, NY
Rabbi Joshua L. Caruso, Temple Beth El, Spring Valley, NY
Rev. Gary L. Carver, First Baptist Church, Chattanooga, TN
Rev. Steven Charles Case, Grace Baptist Church, Westmont, NJ
Rev. Michael D. Castle, Cross Creek Community Church, Dayton, OH
Rev. Ignacio Castuera, United Methodist, Pacific Palisades, CA
Rev. Michael Catalano, Unity of the Hills, Branson, MO
Rev. Donna M. Cavedon, United Church of Christ, Hanover, NH
Rev. Eunice I. Chalfant, Celebration of Life Church (United Church of Religious Science), Kettering, OH
Dr. David, P. Chandler, Chair of Adult Ministries, Downy United Methodist Church, Downey, CA
Rev. Gary L. Chapman, PhD, (U.C.C), Burlington, IA
Rabbi Joshua Chasan, Ohavi Zedek Synagogue, Burlington, VT
Rev. Larry Chesser, Baptist, Burke, VA
Rev. Barbara Child, Unitarian Universalist Church of Tampa, Tampa, FL
Rev. Kyle Childress, Austin Heights Baptist Church, Nacogdoches, TX
Pastor, Dennis Christiansen, First Baptist Church, Clifton Springs, NY
Rev. Linda Morgan Clark, United Methodist, Muskogee, OK
Rev. Maryell Cleary, Unitarian Universalist, East Lansing, MI
Rev. Mark M. Clinger, First Baptist Church, Madison, WI
Rabbi David B. Cohen, Congregation Sinai, Milwaukee, WI
Rabbi Kathy S. Cohen, Roanoke, VA
Rabbi Paul F. Cohen, Temple Jeremiah, Northfield, IL
Rabbi Hillel Cohn, Congregation Emanu El, San Bernadino, CA
Rabbi Edward Cohn, Temple Sinai, New Orleans, LA
Rabbi Holly Cohn, Congregation Kol Am, Ballwin, MO
Rev. Donald R. Cole, Salem Baptist Church, Brandenburg, KY
Rev. Lawrence B. Coleman, Churchland Baptist Church, Chesapeake, VA
Rev. Don Coleman, Pastor, University Church, Chicago, IL
Rev. Ann Marie Coleman, Pastor, University Church, Chicago, IL
Rev. Jacqueline Collins, Unitarian Church, Charleston, SC
Rev. Thomas H. Collins, Blackstone Baptist Church, Blackstone, VA
Rabbi Neil Comess-Daniels, Beth Shir Shalom, Santa Monica, CA
Rabbi Ernest J. Conrad, Temple Kol Ami, West Bloomfield, MI
Rev. Rollin A. Conway, PhD, United Methodist, Bay Village, OK
Pastor Ronald L. Cook, First Baptist Church, Brownwood, TX
Rev. Harry T. Cook, Rector, St. Andrews Episcopal Church, Clawson, MI
Rev. Dennis Coon, Trinity United Methodist Church, Des Moines, IA
Rev. Robert D. Cooper, United Methodist, Dallas, TX
Rev. Judith M. Coplen, Presbyterian Church (USA), Fayetteville, AR
Rev. Forest Cornelius, PhD, American Baptist Churches, USA, Waterloo, IA
Rev. Lew B. Cort, Liberty Baptist Church, Springfield, MO
Rabbi Laurie Coskey, Poway, CA
Rev. Ragan Courtney, Terrytown Baptist Church, Austin, TX
Rev. Cynthia Clawson, Courtney, Terrytown Baptist Church, Austin, TX
Rev. Sam Cox, UMC, Kailua, HI
Pastor Susan Halcomb Craig, United University Church, Los Angeles, CA
Rev. Katie Lee Crane, First Parish of Sudbury, Sudbury, MA
Dr. Kent Cranford, First Baptist Church, Commerce, GA
Dr. Marion Crayton, Ebenezer A.M.E. Church, Fort Washington, MD
Rev. Jimmy Creech, Methodist, Raleigh, NC
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Rev. Bryant Currier, First Baptist Church, Waverly, KS
Rev. Arthur E. Curtis, Minister, Unitarian Universalist Fellowship, Anchorage, AK
Rev. Thomas H. Cusick, St. Anthony Catholic Church, Belleville, MI
Rev. Peg Custer, St. Andrew's-in-the-Valley Episcopal Church, Tamworth, NH
Rev. Ben F. Dake, First Presbyterian Church, Cottage Grove, OR
Rev. Paul E. Dakin, Warrenton Baptist Church, Warrenton, VA
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Rev. Gary Dalton, Belmont Baptist Church, Charlottesville, VA
Pastor Jim Dammon, First Baptist Church, Port Arthur, TX
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Rev. James G. Daniely, United Campus Ministry, Petersburg, VA
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Father Bill Davis, Immaculate Heart of Mary Catholic Church, Houston, TX
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Rev. Deborah Davis-Johnson, Immanuel Baptist Church, Portland, ME
Dr. W. Robert DeFoor, Harrodsburg Baptist Church, Harrodsburg, KY
Rev. Linda, DeLaine, Riverside Baptist Church, Washington, DC
Rev. Gregory Dell, Broadway United Methodist Church, Chicago, IL
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Rev. Hance Dilbeck, First Baptist Church, Ponca City, OK
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Rev. Stan Easty, St. Peter's Episcopal Church, Sunbury, NC
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Rabbi Allen I. Freehling, University Synagogue, Los Angeles, CA
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Pastor Inga Freyer Nicholas, Michigan Avenue Baptist Church, Saginaw, MI
Pastor Ron Freyer Nicholas, Michigan Avenue Baptist Church, Saginaw, MI
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Rabbi Irwin N. Goldenberg, Temple Beth Israel, York, PA
Rabbi Mark N. Goldman, Rockdale Temple, Cincinnati, OH
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Rabbi Samuel N. Gordon, Congregation Sukkat Shalom, Wilmette, IL
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Rabbi Tom Gutherz, Agudath Sholom Congregation, Lynchburg, VA
Rabbi Jason Gwasdoff, Temple Israel, Stocton, CA
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Rev. Jeffrey Haggray, Pennsylvania Avenue Baptist Church, Washington, DC
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Rev. Jimmy Hagwood, Robersonville First Baptist Church, Robersonville, NC
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Rev. Mark, W. Harris, First Parish of Watertown, Watertown, MA
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Dr. Henry, P. Haynes, First Baptist Church, Vinita, OK
Rev. Phil Heard, Pine Grove Baptist Church, Madison, FL
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Rev. Sally S. Johnson, Beacon Hill Presbyterian Church, Austin, TX
Rev. Kathryn Johnson, Methodist Federation for Social Action, Washington, DC
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Rev. Bobbi Kaye Jones, Grace United Methodist Church, Corpus Christi, TX
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Rev. Sheree H. Jones, First Baptist Church, Aiken, SC
Rev. J. Stephen Jones, Southside Baptist Church, Birmingham, AL
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Rev. Dr. Richard W. Jordan, Antioch Baptist Church, Taylorsville, NC
Rev. David M. Jordan, First Baptist Church, Rockingham, NC
Rev. Dr. Robert Mark Jordon, First Baptist Church, Front Royal, VA
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Rabbi Samuel K. Joseph, Jewish, Cincinnati, OH
Rabbi Bruce Kadden, Temple Beth El, Salinas, CA
Rabbi Bruce E. Kahn, Temple Shalom, Chevy Chase, MD
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Rabbi Janet Marder, Congregation Beth Am, Los Altos Hills, CA
Rabbi Bonnie Margulis, Reform Judaism, Springfield, VA
Rev. Gail Lindsay Marriner, First Unitarian Church, Houston, TX
Rev. Ronny Marriott, Sunset Canyon Baptist Church, Dripping Springs, TX
Rev. Anne Marsh, Co-Minister, Unitarian Universalist Church, Canton, NY
Rabbi Gregory S. Marx, Jewish, Spring House, PA
Rabbi Steven S. Mason, North Shore Congregation Israel, Glencoe, IL
Rev. Michael Ray Mathews, Grace Baptist Church, San Jose, CA
Rev. Carolyn A. Mathis, First Baptist Church, Greenville, SC
Rev. Stephen L. Mathison-Bowie, Central Presbyterian Church, Eugene, OR
Rev. Walter C. May, Sr. Pastor Kingshighway Missionary BaptistChurch, Pine Bluff, AR
Rabbi Gary A. Mazo, Cape Cod Synagogue, Hyannis, MA
Rick McClatchy, Executive Minister, Cooperating Baptist Fellowship of Oklahoma, Norman,OK
Dr. Donald L. McClung, First Baptist Church, Hawkinsville, GA
Rev. Robert McCluskey, Swedenborgian Church, New York, NY
Rev. Dr. George H. McConnel, Westminster Presbyterian Church, Dayton, OH
Rev. Robert McConnell, Senior Minister, First Presbyterian Church of Manhattan, Manhattan, TX
Rev. B.L. McCormick, Baker Chapel AME, Ft. Worth, TX
Rev. Thomas L. McCracken, First Christian Church, Lexington, TX
Rev. Kevin McDonald, First Baptist Church, Hamilton, TX
Rev. Timothy McDonald, First Iconium Baptist Church, Atlanta, GA
Rev. David W. McFarland, Cache Valley Unitarian Universalists, Logan, UT
Rev. Richard L. McGuffin, Interim Pastor, First Baptist Church, Horton, KS
Dr. John W. McKain, Suncrest Baptist Church, Tulsa, OK
Rev. Susan McKeegan-Guinn, Calvin-Sinclair Presbyterian Church, Cedar Rapids, IA
Dr. Jack McKinney, Pullen Memorial Baptist Church, Raleigh, NC
Dr. Johnny F. McKinney, Boulevard Baptist Church, Anderson, SC
Rev. Coyse David, McLemore, Second Baptist Church, Russellville, AR
Rev. Elizabeth McMaster, Unitarian Church of Los Alamos, Los Alamos, NM
Rabbi Ralph Mecklenberger, Beth—El Congregation, Fort Worth, TX
Rabbi Michele Medwin, Temple Sholom, Broomall, PA
Rev. Paul S. Mefford, Zion United Church of Christ, Henderson, KY
Rev. Edwin Mehlhaff, United Church of Christ, Houston, TX
Rabbi Bernard Mehlman, Temple Israel, Boston, MA
Rabbi Paul Menitoff, Central Conference of American Rabbis, New York, NY
Rev. Steven H. Meriwether, St. Charles Avenue Baptist Church, New Orleans, LA
Rev. Deborah Mero, All Souls Church, West Brattleboro, VT
Rev. Ralph Mero, Unitarian Universalist, Framingham, MA
Rev. William Messenger, Our Savior Catholic Center, Los Angeles, CA
Rabbi Joseph B. Meszler, Washington Hebrew Congregation, Washington, DC
Rev. Judith M. Metzger, St. Paul's Episcopal Cathedral, Buffalo, NY
Rev. Judith Meyer, Minister, Unitarian Universalist Community Church, Santa Monica, CA
Rabbi Joel Meyers, Executive Director, The Rabbinical Assembly, New York, NY
Rabbi Brian I. Michelson, Reform Congregation Oheb Sholom, Reading, PA
Rabbi Dr. Laurence Milder, Congregation Beth El, Bangor, ME
Rabbi Eric Milgrim, Temple B'nai Shalom, East Brunswick, NJ
Rev. Linda Miller, Universal Life Church, Ventura, CA
Rev. Elizabeth L. Miller, Unitarian Universalist Church of the Monterey Peninsula, Carmel, CA

Rev. James C. Miller, The First Baptist Church in America, Providence, RI
Rev. Robert I. Miller, Duarte, CA
Brother, Larry Mills, Buchanan Street Chapel, Amarillo, TX
Dr. Michael J. Mitchell, Gault Avenue Baptist Church, Fort Payne, AL
Rev. Marsha Mitchiner, First Existentialist Congregation, Atlanta, GA
Rev. Kenneth R. Mochel, Minister, Unitarian Universalist Church of Auburn, Auburn, NY
Rabbi Jack Moline, Agudas Achim Congregation, Alexandria, VA
Rev. Douglas J. Monroe, The First United Methodist Church of Reno, Reno, NV
Sonya Montana, Interim Minister, First Unitarian Universalist Church, Ann Arbor, MI
Rev. R. Patrick Moore, Lakeshore Drive Baptist Church, Little Rock, AR
Pastor Paul G. Moore, Sans Souci Baptist Church, Greenville, SC
Rev. Denis E. Moore, Senior Pastor Metropolitan Community Church, San Jose, CA
High Priestess Heather Morcroft, Coven of the Crescent Path, Orlando, FL
Rev. Judith Morris, Norfolk Unitarian Universalist Church, Norfolk, VA
Rev. Dr. B. Wayne Morris, Central Baptist Church, Lawton, OK
Rabbi Jay Moses, Temple Sholom, Chicago, IL
Rabbi Michael L. Moskowitz, Temple Shir Shalom, West Bloomfield, MI
Rev. Ralph W. Mueckenheim, United Methodist Church, Hempstead, NY
Rev. Robert W. Muise, St. Peters U.C.C. Lancaster, PA
Dr. Robert C. Mulkey, First Baptist Church, DeLand, FL
Rev. Allen B. Mullinox, Virginia Highland Baptist Church, Atlanta, GA
Rev. Neil Mulock, Bethel Presbyterian Church, Waterloo, IA
Dr. James Gordon, Munro, Vienna Baptist Church, Vienna, VA
Rev. Martha Murchison, Presbyterian Church (USA), Dallas, TX
Patrick Murfin, Moderator, Congregational Unitarian Church, Woodstock, IL
Rev. Joseph M. Murphy, First Congregational Church, United Church of Christ, Walla Walla, WA
Dr. Kenneth L. Myers, Hendricks Avenue Baptist Church, Jacksonville, FL
Rev. Monshin Paul, Naamon, Karuna Tandai Dharma Center (Buddhist), East Chatham, NY
Rev. Ronald Y. Nakasone, Buddhist, Fremont, CA
Rev. Silvio Nardoni, Unitarian Universalist Community Church of Santa Monica, Santa Monica, CA
Rev. Rhonda G. Nash, Hull's Memorial Baptist Church, Fredericksburg, VA
Rev. Norman V. Naylor, Unitarian Universalist, Southfield, MI
Rev. John A. Nelson, United Church of Christ, Dover, MA
Dr. Robert M. Newell, Memorial Drive Baptist Church, Houston, TX
Rev. Mark A. Newton, Baptist Temple, San Antonio, TX
Rev. Alan Newton, Underwood Baptist Church, Wauwatosa, WI
Rev. Donald Ng, First Chinese Baptist Church, San Francisco, CA
Rev. Walter R. Nickel, First Baptist Church, Vinton, IA
Pastor Kerry R. Ninemire, Pastor St. Mary's Catholic Church, Salina, KS
Rev. Victor H. Nixon, Pulaski Heights United Methodist Church, Little Rock, AR
Rev. James Norman, Unitarian Universalist, Concord, NH
Pastor James F. Norris III, Lawtonville Baptist Church, Estill, SC
Rev. Lloyd L. Noyes, American Baptist Churches, USA, Depew, NY
Rev. Richard A. Nugent, Minister, The Universalist Society, New York, NY
Rev. Nancy Holmes Nyberg, Pastor First Congregational United Church of Christ, Carpentersville, IL
Rev. Dr. William R. Nye, All Souls Bethlehem Church, Brooklyn, NY
Shannon O'Donnell, Catholic Chaplain, Washington Corrections Center, Shelton, WA
Rev. Dr. Sarah W. Oelberg, Nora Unitarian Universalist Church, Hanska, MN
Rabbi Stacey K. Offner, Shir Tikvah Congregation, Minneapolis, MN
Rev. Paul Ojibway, S.A. Graymore Ecumenical and Interreligious Institute, Washington, DC
Rev. Marcia Olsen, Unitarian Universalist, Laguna Beach, CA
Rev. Judith Brown Osgood, Shoreline Unitarian Universalist Soceity, Madison, CT
Rev. Christine Otan, First Chinese Baptist Church, San Francisco, CA
Rev. Dr. Walter L. Owensby, Presbyterian Church (USA), Washington, DC
Rev. Carolyn Owen-Towle, First Unitarian Universalist Church, San Diego, CA
Rev. Tom Owen-Towle, First Unitarian Universalist Church, San Diego, CA
Rabbi Sandy Roth Parian, Kehilat Ha Nahar, New Hope, PA
Rev. Shawn Parker, Lakeview Baptist Church, New Orleans, LA
Rabbi Jordan M. Parr, Congregation Children of Israel, Augusta, GA

Rev. Rodney G. Parrish, Deacon Chair, First Baptist Church, Oak Ridge, TN
Rev. Susan Burgess, Parrish, Interim Pastor Fellowship Baptist Church, Edison, GA
Dr. Harry B. Parrott Jr., American Baptist Churches, U.S.A. St. Petersburg, FL
Dr. Bob Parsley, First Baptist Church, Crofton, MD
Rabbi Jack P. Paskoff, Congregation Shaarai Shomayim, Lancaster, PA
Pandit Kusum C. Patel, Pres. Gayatari Pariwar Yugnirmanchicag, Niles, IL
Rev. Dr. Roger Paynter, First Baptist Church, Austin, TX
Rev. Aaron R. Payson, The UU Church of Worcester, Worcester, MA
Rev. Larry Peacock, Malibu United Methodist Church, Malibu, CA
Rev. Clarence Pemberton, New Hope Baptist Church, Philadelphia PA
Rev. Linda R. Pendergrass, Unity Church of Austin, Austin, TX
Rev. Julie Pennington Russell, Calvary Baptist Church, Waco, TX
Rev. Elaine Beth Peresluhn, Unitarian Universalist Society of Bangor, Bangor, ME
Rabbi Daniel Pernick, Beth Am Temple, Pearl River, NY
Rabbi Shoshana M. Perry, Congregation Shalom, Chelmsford, MA
Rev. Stewart Perry, Baptist Temple Church, Alexandria, VA
Rev. Clare L. Petersberger, The Towson Unitarian Universalist Church, Lutherville, MD
Rev. Gladys M. Peterson, University Baptist Church, Austin, TX
Rev. Roy S. Petitt, Pentecostal, Los Angeles, CA
Rev. Dixie Lea Petrey, Pastor/Chaplain, Shannondale Retirement Community, Knoxville, TN
Rabbi Aaron M. Petuchowski, Temple Sholom of Chicago, Chicago, IL
Rabbi Bruce J. Pfeffer, Jewish, Cincinnati, OH
Dr. Joseph O. Phelps, Highland Baptist Church, Louisville, KY
Rev. Dr. Kenneth W. Phifer, First Unitarian Universalist, Ann Arbor, MI
Rev. Thomas J. Phillip, Presbyterian, Merrick, NY
Rev. Larry Phillips, Emmanuel Baptist—Friends United Church of Christ, Schenectady, NY
Rev. J.M. Phillips, PhD, St. Augustine Episcopal Church, Kingston, RI
Rev. Randall R. Phillips, ST.D., Roman Catholic, Dearborn Heights, MI
Rev. Patricia J. Pickett, D. Min., Nashville Cumberland Presbytery, Nashville, TN
Rev. Rex E. Piercy, J.D., United Methodist, Waukee, IA
Rev. James L. Pike, Olin T. Binkley Memorial Baptist Church, Chapel Hill, NC
Rev. LeDayne McLeese Polaski, Baptist Peace Fellowship of North America, Charlotte, NC
Rev. Willow Polson, House of Life, San Jose, CA
Dr. Marcus C. Pomeroy, Central Baptist Church, Wayne, PA
Rev. Deborah J. Pope-Lance, Interim Minister, First Parish of Stow and Acton, Stow, MA
Rev. Lynn Potter, United Methodist Church, Estherville, IA
Rev. James L. Pratt, Noank Baptist Church, Noank, CT
Rev. Cynthia Prescott, Unitarian Universalist Fellowship of Clemson, Clemson, SC
Dr. Bruce Prescott, Executive Director, Mainstream Oklahoma Baptists, Norman, OK
Rev. Lisa Presley, Northwest Unitarian Universalist Church, Southfield, MI
Charles B. Prewitt, D. Min., Amazing Grace Lutheran Church, San Antonio, TX
Rev. Dr. Allen Price, Episcopal Church, Diocese of Alaska
Rabbi Sally J. Priesand, Monmouth Reform Temple, Tinton Falls, NJ
Dr. Michael L. Prince, Robertsville Baptist Church, Oak Ridge, TN
Rabbi Deborah R. Prinz, Temple Adat Shalom, Poway, CA
Rev. Frank Proffitt, First Baptist Church, Erwin, TN
Sheri Prud'homme, Religious Educator, Unitarian Universalist Association Pacific Central District, Oakland, CA
Dr. Rudy A. Pulido, Southwest Baptist Church, St. Louis, MO
Dr. Kathy S. Quinn, Co-Chair, Lutherans Concerned, Columbia, SC
Rev. Paul F. Rack, Presbyterian, Woodbridge, NJ
Rev. Allen Rames, Everett Hills Baptist Church, Maryville, TN
Rev. Carolee Ramsey, First Unitarian Universalist Church, Austin, TX
Rev. Dr. James Madison Ramsey, First Baptist Church, Albany, GA
Rev. Shirley Ranck, Ph.D., Unitarian Universalist Congregation, Olympia, WA
Rev. R. Mitch Randall, First Baptist Church, Bedford, TX
Pastor Emeritus J. Richard Randels, Lakeview Baptist Church, New Orleans, LA
Rev. Dr. Ozark Range, Sr., Christian Church (Disciples of Christ), Greenwood, MS
Rabbi Robert J. Ratner, Congregation Beth Hatephila, Asheville, NC

Rev. Paul Ratzlaff, Morristown Unitarian Fellowship, Morristown, NJ
Rev. Everett F. Reed, Lowville Baptist Church, Lowville, NY
Rev. Dr. Kwame Osei Reed, Potomac Association United Church of Christ, Baltimore, MD
Rev. David Reed-Brown, First Baptist Church, Essex, CT
Dr. Frank G. Reeder, First Baptist Church, Pitman, NJ
Rev. Mia Reeves, Interfaith Minister/ High Priestess Moonsong Coven, Jersey City, NJ
Most Rev. John Reeves, Auxiliary Bishop, Catholic Church of the Americas, St. Petersburg, FL
Rev. George Regas, Episcopalian, Pasadena, CA
Rev. Karen Reynolds, Mud Pike Baptist Church, Moores Hill, IN
Rev. Michael C. Reynolds, Freeway Manor Baptist Church, Houston, TX
Rev. Thomas N. Rice, Baptist Temple, Rochester, NY
Rev. George M. Ricker, United Methodist Clergy, Austin, TX
Rev. Butch Riddle, First Baptist Church, Ashdown, AR
Rev. Jim Rigby, St. Andrew's Presbyterian Church, Austin, TX
Rev. Meg A. Riley, Unitarian Universalist Association, Washington, DC
Rabbi Ted Riter, Temple Solel, Encinitas, CA
Rabbi Daniel A. Roberts, Temple Emanu El, University Heights, OH
Rabbi Alexis Roberts, Congregation Dor Hadash, San Diego, CA
Rev. Wayne Robinson, UU Church of Greater Lansing, East Lansing, MI
Rev. Dr. Wayne Robinson, Minister, All Faiths Unitarian Congregation, Ft. Meyers, FL
Dr. Gerald E. Robinson, Starling Avenue Baptist Church, Martinsville, VA
Dr. Floyd F. Roebuck, Garden Lakes Baptist Church, Rome, GA
Rabbi Norman T. Roman, Temple Kol Ami, West Bloomfield, MI
Rabbi Gaylia R. Rooks, The Temple, Adath Israel Brith Sholom, Louisville, KY
Rev. Rita M. Root, UMC, Dekalb, IL
Rev. Bonnie Rosborough, PhD, Broadway United Church of Christ, New York, NY
Rabbi Herbert H. Rose, Temple Beth Shalom, Brandon, FL
Rev. Richard Rose, First Baptist Church, Batavia, NY
Rev. Dr. Tarris D. Rosell, American Baptist, Kansas City, KS
Rabbi Kenneth D. Roseman, Temple Shalom, Dallas, TX
Rev. Dr. Daniel Rosemergy, Brookmeade Congregational Church United Church of Christ, Nashville, TN
Rabbi Sanford E. Rosen, Peninsula Temple Beth El, San Mateo, CA
Rabbi Harry Rosenfeld, Temple Beth Zion, Buffalo, NY
Rabbi Cheryl Rosenstein, Temple Beth El, Bakersfield, CA
Rabbi Morton M. Rosenthal, Lawrenceville, NJ
Rabbi Leonard Rosenthal, Tifereth Israel Synagogue, San Diego, CA
Dr. William L. Ross, First Baptist Church, Athens, GA
Rev. Jean M. Rowe, Minister, Neshoba Unitarian Universalist Church, Germantown, TN
Sister Rosalie Rueseweld, St. Scholastica Monastery, Fort Smith, AR
Rev. Susan Russell, St. Peter's Episcopal Church, San Pedro, CA
Rabbi Richard B. Safran, Emeritus, Achduth Vesholom, Fort Wayne, IN
Rabbi Douglas B. Sagal, K.A.M. Isaiah Israel, Chicago, IL
Rabbi Robert Saks, Washington, DC
Rabbi Jeffrey K. Salkin, The Community Synagogue, Port Washington, NY
Rev. Dr. Bruce C. Salmon, Village Baptist Church, Bowie, MD
Rev. Dr. David Sammons, Mt. Diablo Unitarian Universalist Church, Walnut Creek, CA
Rev. Jason Samuel, Episcopal Church of the Transfiguration, St. Louis, MO
Rabbi Neil Sandler, Tifereth Israel Congregation, Des Moines, IA
Rev. Joan M. Saniuk, The Metropolitan Community Church of Boston, Roslindale, MA
Rabbi David Saperstein, Director, Religious Action Center of Reform Judaism, Washington, DC
Rabbi Marna Sapsowitz, Temple Beth Hatfiloh, Olympia, WA
Rabbi Herman E. Schaalman, Rabbi Emeritus, Emanuel Congregation, Chicago, IL
Rev. Edward W. Schadt, Mission Hills United Church of Christ, San Diego, CA
Rev. Robert L. Schaibly, First Unitarian Church, Houston, TX
Rev. Dr. Donna Schaper, Coral Gables Congregational Church, Miami, FL
Rabbi Amy Scheinerman, Beth Shalom Congregation, Taylorsville, MD
Rev. Richard A. Schempp, Presbyterian Church (USA), Lubbock, TX
Rev. J. David Scheyer, Unitarian Universalist, Franklin, NC

Cantor Neil Schnitzer, Society Hill Synagogue, Philadelphia, PA
Rev. Kathryn Schreiber, United Church of Christ, Brookings, OR
Rev. Mike Schuenemeyer, Pastor, Diamond Bar Congregational Church, Diamond Bar, CA
Rev. Dr. Michael A. Schuler, Senior Minister, First Unitarian Society, Madison, WI
Rev. Melvin Ray Schultz, Disciples of Christ, Baltimore, MD
Rev. Larold Schulz, First Congrgational United Church of Christ, Alameda, CA
Rabbi Gershom Schwartz, Beth Sholom Congregation, Elkins Park, PA
Rabbi Amy Schwartzman, Temple Rodef Shalom, Falls Church, VA
Rev. Louis V. Schwebius, The Community Church of New York, New York, NY
Dr. Jeffery Warren Scott, Colonial Avenue Baptist Church, Roanoke, VA
Rev. Gail S. Seavey, First Universalist Church of Salem, Salem, MA
Rev. James A. Seddon, Shiloh Baptist Church, Columbus, IN
Rev. Edward Seeger, Corpus Christi Metro Ministries, Corpus Christi, TX
Rabbi Robert A. Seigel, Temple Beth Israel, Fresno, CA
Rev. Alan D. Selig, First Baptist Church, Manhattan, KS
Karen H. Senecal, Associate Minister, Judson Memorial Church, New York, NY
Rev. Dr. Robert E. Senghas, Unitarian Universalist, Burlington, VT
Dr. Fred Senter, First Baptist Church, Wadesboro, NC
Rabbi Isaac Serotta, Lakeside Congregation for Reform Judaism, Highland Park, IL
Rabbi Gerald Serotta, Temple Shalom, Chevy Chase, MD
Rev. Arthur G. Severance, First Unitarian Church, San Antonio, TX
Rabbi Howard Shapiro, Temple Israel, West Palm Beach, FL
Dr. C. Scott Shaver, Coordinator, Mainstream Louisiana Baptists, Natchitoches, LA
Rev. Jack A. Shaw, King Street Baptist Church, Cocoa, FL
Rabbi Charles P. Sherman, Temple Israel, Tulsa, OK
Rev. William D. Shiell, Southland Baptist Church, San Angelo, TX
Rabbi Rebecca Pomerantz Shinder, Temple Sinai of Bergen County, Tenafly, NJ
Assoc. in Ministry, Holly Shipley, Faith Lutheran Church, Lexington, KY
Pastor Harold Shirlee, Pleasant Grove Baptist Church, Pine Bluff, AR
Cantor Michael A. Shochet, Temple Rodef Shalom, Falls Church, VA
Rev. Madison Shockley, United Church of Christ, Los Angeles, CA
Rabbi Mark L. Shook, Congregation Temple Israel, St. Louis, MO
Rev. Amy Short, E.D., Brethren/Mennonite Council for Lesbian and Gay Concerns, Minneapolis, MN
Rev. Craig Showalter, Cross Creek Community Church, Dayton, OH
Dr. Robert D. Shrum, Oakland Baptist Church, Rock Hill, SC
Rev. Candace R. Shultis, Pastor, Metropolitan Community Church of Washington, Washington, DC
Dr. Walter B. Shurden, Baptist, Macon, GA
Wayne S. Siet, Cantor, Temple Shaari Emeth, Manalapan, NJ
Rev. David L. Silke, First Baptist Church, Olympia, WA
Rabbi Robert Silvers, Congregation B'nai Israel, Boca Raton, FL
Rev. John G. Simmons, Lutheran, Burbank, CA
Rev. Paul D. Simmons, Ph.D., Baptist, Louisville, KY
Rabbi James L. Simon, Temple Sinai of North Dade, North Miami Beach, FL
Bishop Bennet J. Sims, The Institute for Servant Leadership, Asheville, NC
Rev. Katherine Sinclair, Coldspring United Methodist Church, Coldspring, TX
Rev. Donald W. Sinclair, United Methodist Church, Texas Annual Conf., Coldspring, TX
Rev. Richard B. Skidmore, Kairos-Milwaukie United Church of Christ, Milwaukie, OR
Rev. Fred Small, First Church Unitarian, Littleton, MA
Rev. E. Jo Smith, St. John's United Methodist Church, Austin, TX
Rev. Wayne G. Smith, St. John's United Methodist Church, Austin, TX
Rev. Paul L. Smith, First Baptist Church, Calhoun City, MS
Dr. Stanley L. Smith, First Baptist Church, Boulder, CO
Rev. Dr. Layne E. Smith, Viewmont Baptist Church, Hickory, NC
Rev. Daniel E. Smith, Pastor, West Hollywood Presbyterian Church, Los Angeles, CA
Rev. Brent A. Smith, PhD, Fountain Street Church, Grand Rapids, MI
Rev. Dr. Dwight D. Snesrud, retired, United Church of Christ, Lincoln, NE
Dr. Stanley D. Smith, Senior Pastor, First Christian Church (Disciples of Christ), Orange, CA
Rev. Dr. Joshua A. Snyder, Second Unitarian Church at Omaha, Omaha, NE

Rabbi Ronald B. Sobel, Temple Emanu-El, New York, NY
Rabbi David M. Sofian, Emanuel Congregation, Chicago, IL
Rev. Andrew L. Solice, Sr. New Life United Methodist Church, Baltimore, MD
Rabbi Rav A. Soloff, Central Conference of American Rabbis, Lansdale, PA
Rev. L.K. Solomon, Pastor, D. Min., Indiana Street Baptist Church, Pine Bluff, AR
Rev. Dr. James G. Somerville, First Baptist Church, Washington, DC
Rev. Kenneth T. South, United Church of Christ, Washington, DC
Rev. Dr. Richard Speck, Unitarian Universalist, Wilmington, DE
Rev. Lon Speer, United Methodist, Austin, TX
Rev. Edward E. Spence, Presbyterian Church (USA), Chandler, AZ
Rev. Mr. Jeffrey S. Spencer, Tolt Congregational United Church of Christ, Carnation, WA
Rev. Lowell H. Spencer, United Methodist, Lynchburg, VA
Rabbi Scott M. Sperling, Temple De Hirsch Sinai, Seattle, WA
Rev. Ellen Rowse Spero, Assistant Minister, First Parish in Lexington, Lexington, MA
Fr. Thomas J. Spiegel, Our Lady of Lourdes Church, Bettendorf, IA
Rev. Douglas B. Stearns, Member, Grace Presbytery, DeSoto, TX
Rabbi Adam Stock Spilker, Mount Zion Temple, St. Paul, MN
Rev. Susan Sprague, Trinity United Methodist Church, Austin, TX
Very Rev. E. Kyle, St. Clair Jr. Episcopal, New Hope, PA
Rabbi Samuel M. Stahl, Temple Beth-El, San Antonio, TX
Rabbi Mark Staitman, D.Min., Rodef Shalom Congregation, Pittsburgh, PA
Rev. Dallas T. Stallings, Haymarket Baptist Church, Haymarket, VA
Rev. F. Herb Stallknecht III, St. Mathews United Methodist Church, Houston,TX
Rev. Susan L. Starr, First Unitarian Church of Oakland, Oakland, CA
Rabbi Sonya Starr, Columbia Jewish Congregation, Columbia, MD
Rev. Michael A. Stein, Christian Church (Disciples of Christ), Scottsbluff, NE
Rabbi Lane Steinger, Union of American Hebrew Congregations, St. Louis, MO
Rabbi David Steinhardt, B'nai Torah Congregation, Boca Raton, FL
Rev. Charles J. Stephens, UU Church of Washington Crossing -Pennington Rd, Titasville, NJ
Rabbi George Stern, Jewish, Valley Cottage, NY
Rabbi Ronald H. Stern, Stephen Wise Temple, Los Angeles, CA
Rev. Connie Sternberg, Unitarian Universalist Society East, Manchester, CT
Rev. Elizabeth B. Stevens, First Church in Dedham, Dedham, MA
Rabbi Michael N. Stevens, Temple Beth El, Munster, IN
Rabbi Jeffrey Stiffman, Congregation Shaare Emeth, St. Louis, MO
Rev. David E. Stine, University Baptist Church, Austin, TX
Rev. Jerald M. Stinson, Senior Minister, First Congregational Church (UCC), Long Beach, CA
Rev. Dr. Nathan L. Stone, Unitarian Universalist Fellowship of Waco, Waco, TX
Rev. Krishna Stone, Sanctuary of the Church, New York, NY
Rabbi Warren Stone, Temple Emanuel, Kensington, MD
Rev. Bebb Wheeler, Stone, PhD, Presbyterian Church (USA), Pittsburgh, PA
Rabbi Andrew Straus, Temple Emanu-El of Tempe, Tempe, AZ
Rabbi Mark Strauss-Cohn, Jewish, Tampa, FL
Rev. Dr. Charles H. Straut, Jr., Kings Highway United Methodist Church, Brooklyn, NY
Rev. Laura Lee Strawser, First Baptist Church, Birmingham, MI
Rev. Victoria Streiff-Fraser, Unitarian Universalist Fellowship of Columbus, Columbus, IN
Rabbi Elliot M. Strom, Shir Ami B.C.J.C. Newton, PA
Rev. James D. Stuckey, Jr., Murray Hill Baptist Church, Jacksonville, FL
Rev. Elwood R. Sturtevant, Thomas Jefferson Unitarian Church, Louisville, KY
Rabbi Brooks R. Susman, Temple Shaari Emeth, Manalapan, NJ
Dr. John A. Sylvester-Johnson, Grandin Court Baptist/Rescue Mission of Roanoke, Roanoke, VA
Rabbi Barbara Symons, Temple Etz Chaim, Franklin, MA
Rabbi Irwin A. Tanenbaum, D.D., Temple Sholom, Monticello, NY
Rabbi Harvey M. Tattelbaum, Senior Rabbi Temple Shaaray Tefila, New York, NY
Rabbi Joshua S. Taub, The Temple, Congregation B'Nai Jehudah, Kansas City, MO
Rev. Thomas S. Taylor, United Methodist, Brecksville, OH
Pastor Richard H. Taylor, Beneficient Congregational Church (UCC), Providence, RI

Rev. George R. Taylor, First Presbyterian Church, Stroudsburg, PA
Rabbi Dov Taylor, Congregation Solel, Highland Park, IL
Rev. Daniel L. Taylor, American Baptist Churches of Ohio, Granville, OH
Pastor Ralph Thomas Taylor, Pilgrim Congregational Church, New Haven, CT
Rev. Alan C. Taylor, Minister, Woodinville Unitarian Universalist Church, Woodinville, WA
Pastor Greg Templin, Ephesus Baptist Church, Raleigh, NC
Dr. Eugene TeSelle, Presbyterian Church (U.S.A.), Nashville, TN
Rev. Jane E. Thickstun, Unitarian Universalist, Midland, MI
Rev. Carl Thitchener, Co-Minister, Unitarian Universalist Church of Amherst, Amherst, NY
Rev. Maureen Thitchener, Co-Minister, Unitarian Universalist Church of Amherst, Amherst, NY
Rev. Benjamin E. Thomas, Stuart Baptist Church, Stuart, VA
Rev. Gregory Thomas, West Bowdoin Baptist Church, Bowdoin, ME
Dr. James R. Thomason, First Baptist Church, Anderson, SC
Rev. Robert V. Thompson, Lake Street Church of Evanston (American Baptist Churches of the U.S.A.), Evanston, IL
Rev. Albert H. Thompson III, United Church of Christ, Mankato, MN
Rev. L. Douglas Throckmorton, Minister Member, The Presbytery of the Twin Cities Area, White Bear Lake, MN
Rev. Tony L. Thurston, College Avenue Christian Church, Des Moines, IA
Rev. W.B. Tichenor, Baptist, Columbia, MO
Fred Tilinski, Coordinator, Chistians for Justice Action, St. Peters, MO
Willie Timmons, Preacher, Little Union Christian Church, Hayneville, AL
Rev. James R. Tilton, Presbyterian Church (USA), Leawood, KS
Rev. Doug Tipps, First Baptist Church, San Marcos, TX
Dr. Hugh Tobias, Riverside Baptist Church, Jacksonville, FL
Rev. Rebecca J. Tollefson, Ohio Council of Churches, Columbus, OH
Dr. Darryl M. Trimiew, Zion Hill Baptist Church, Rochester,NY
Rev. Marc Tripp, Chairman, The Spiritual Fire Foundation, Tulsa, OK
Rabbi Leonard B. Troupp, Temple Beth David, Commacic, NY
Rev. Randall Trumbo, Enon Baptist Church, Russellville, MO
Rev. Lonni Turner, Baptist, Washington, DC
Rev. Paul M. Turner, Gentle Spirit Christian Church, Atlanta,GA
Dr. William L. Turner, South Main Baptist Church, Houston, TX
Rev. Timothy B. Tutt, Briggs Memorial Baptist Church, Bethesda, MD
Rev. Ann E. Tyndall, Unitarian Church of Evanston, Evanston, IL
Rev. Charles L. Updike, First Baptist Church, Gaithersburg, MD
Rev. Carl A. Urban, Roman Catholic Church of St. Adalbert, Schenectady, NY
Rev. Michael S. Usey, College Park Baptist, Greensboro, NC
Rev. Joan Van Becelaere, Community Minister, First Unitarian Society, Denver, CO
Rev. Leslie Van Blarcom, United Methodist, Shawnee, KS
A. Stephen Van Kuiken, Pastor, Mt. Auburn Presbyterian Church, Cincinnati, OH
Rev. Don W. Vaughn-Foerster, Northwoods Unitarian Universalist Society, The Woodlands, TX
Rev. Carlton W. Veazey, National Baptist Convention, Washington, DC
Rev. Buddy D. Vess, Metropolitan Community Church of Northern Virginia, Fairfax, VA
Rev. Philip Vestal, Harlem Baptist Church, Harlem, GA
Dr. Daniel Vestal, Coordinator, Cooperative Baptist Fellowship, Atlanta, GA
Dr. Ray Vickrey, Royal Lane Baptist Church, Dallas, TX
Rev. C. Joshua Villines, Chaplain, The Alliance of Baptists, Snellville, GA
Rev. Paul Reynolds Warren, St. Paul's United Church of Christ, Schulenborg, TX
Rev. Dr. Audrey Wise Vincent, Unitarian Universalist Church of Savannah, Savannah, GA
Rev. Dr. Richard E. Visser, First Baptist Church, Waynesburg, PA
Rev. Sandra W. Vogel, Lead Pastor, Grantville United Methodist Church, Grantville, KS
Rev. David Von Schlichten, Evangelical Lutheran Church of America, Youngstown, PA
Rev. Kate Walker, Unitarian Universalist Church of Meadville, Meadville, PA
Rev. J. Brent Walker, Baptist, Falls Church, VA
Rev. G. Kent Walmsley, Hope Memorial Baptist Church, Camden, NJ
Rev. Lisa Ward, Unitarian Universalist Minister, Churchville, MD
Dr. Douglas Watterson, North Stuart Baptist Church, Stuart, FL
Rev. Dr. J. David Waugh, Metro Baptist Church, New York, NY

Rev. Gloria Weber, Lutheran, St. Louis, MO
Rabbi Donald A. Weber, Temple Rodeph Torah, Marlboro, NJ
Rabbi David Wechsler-Azen, Temple Har Shalom, Warren, NJ
Rabbi Gerald Weider, Congregation Beth Elohim, Brooklyn, NY
Rabbi Michael A. Weinberg, Temple Beth Israel, Skokie, IL
Rabbi Jennifer C. Weiner, Temple Beth Am, Williamsville, NY
Rabbi Stephen J. Weisman, Temple Solel, Bowie, MD
Rabbi Richard A. Weiss, D.D., M.S.W., Farmington Hills, MI
Rev. Dave Weissbard, Unitarian Universalist Church, Rockford, IL
Rev. Sue Wells, Leader, United Methodist Church, Austin, TX
Rev. Frances West, Minister, Unitarian Universalist Congregation, Marietta, GA
Dr. Donald Wheeler, Emmanuel Baptist Church, Ridgewood, NJ
Rev. L. Gail Wheelock, Church of the Ascension (Episcopal), Wakefield, RI
Rev. Wade Wheelock, Co-Minister, Unitarian Universalist Church, Canton, NY
Rev. Gayle Whittemore, South Congregational Church United Church of Christ, Concord, NH
Rabbi David S. Widzer, Temple Shalom of Newton, Newton, PA
Pastor Suanne Williams-Whorl, Ebenezer United Methodist Church, Middletown, PA
Rev. Dr. Gary A. Wilburn, Presbyterian, New Canaan, CT
Rev. Don Wilkey, Onalaska First Baptist, Onalaska, TX
Dr. J. Michael Wilkins, Gloucester Point Baptist Church, Glouchester Point, VA
Rev. Jeffrey C. Wilkinson, Emmanuel United Church, Mechanicville, NY
Rev. Mary Kay Will, Campus Minister, United Methodist Church, Long Beach, CA
Rev. Jennifer H. Williams, United Methodist, Harrisburg, PA
Rev. John D. Williams, Presbyterian Church (USA), Sherman, TX
Rev. San Williams, University Presbyterian Church, Austin, TX
Rev. Mel Williams, Watts Street Baptist Church, Durham, NC
Rev. George Williamson, Jr., First Baptist Church, Granville, OH
Rev. Michael J. Wills, Northwest Christian Church, Arlington, TX
Dr. G. Todd Wilson, First Baptist Church, Clemson, SC
Rev. William G. Wilson, First Baptist Church, Waynesboro, VA
Rabbi Jonathan S. Woll, Temple Avoda, Fair Lawn, NJ
Rev. Rolen Womack, Baptist, Milwaukee, WI
Rev. Tony O. Woodell, Arkansas Baptists Committed, Little Rock, AR
Rev. Richard M. Woodman, Unitarian Universalist Association, Dover, NH
Dr. Jody C. Wright, Lakeside Baptist Church, Rocky Mount, NC
Dr. Rex Yancey, First Baptist Church, Pascagoula, MS
Rev. Edwin Yates, Pastor, Good Samaritan Parish Metropolitan Community Church, Toledo, OH
Rev. Maran Yaw, Calvary Baptist Church, Washington, DC
Rev. John F. Yeaman, United Methodist, Austin, TX
Rabbi Eric Yoffie, President, Union of American Hebrew Congregations, New York, NY
Rabbi Herbert Yoskowitz, Farmington Hills, MI
Rev. David E. Young, Chapel Lane Presbyterian Church, Midland, MI
Rabbi Roderick Young, Congregation Beth Simchat Torah, New York, NY
Rev. Mike Young, First Unitarian Church, Honolulu, HI
Dr. Gerald L. Young, Boulevard Baptist Church, Falls Church, VA
Dr. Brett Younger, Broadway Baptist Church, Fort Worth, TX
Rabbi Gerald L. Zelizer, Congregation Neve Shalom, Metuchen, NJ
Rabbi Daniel G. Zemel, Temple Micah, Washington, DC
Pastor Nancy J. Zerban, United Church of Wayland, Wayland, MI
Rev. Angela Zimmann, Evangelical Lutheran Church of America, Dundee, MI
Rev. Marty Zimmann, Evangelical Lutheran Church of America, Dundee, MI
Rev. Mary B. Zimmer, Church of the Savior, Austin, TX
Rev. Judith Jon Zimmerman, Trinity Episcopal Church, Houghton, MI
Rabbi Louis Zivic, Congregation Beth Israel, Lebanon, PA
Rev. Amy Zucker, Unitarian Universalist Church of Rutland, Rutland, VT

*House of Worship and Religious Affiliation included for identification purposes only.

[The prepared statement of Mr. Scott follows:]

Statement of the Hon. Robert C. Scott, a Representative in Congress from the State of Virginia

Chairman Herger, Chairman McCrery, Ranking Member Cardin, Ranking Member McNulty and Members of the Subcommittees, I am pleased to have the opportunity to appear before you today to share my concerns regarding the Charitable Choice portion of HR. 7, the "Community Solutions Act of 2001".

Religiously affiliated organizations, including Catholic Charities, Lutheran Services, Jewish Federations and a vast array of smaller faith-based organizations now sponsor government programs. And contrary to President Bush's recent assertions, I am unaware of anyone who opposes these organizations operating public programs and providing services. They are funded like all other private organizations are funded: they are prohibited from using taxpayer money to advance their religious beliefs and they are subject to civil rights laws.

The President visited a Habitat for Humanity site recently highlighting his faith initiative, yet even the Habitat's founder indicated that they are thriving under current provisions without Charitable Choice.

One of the reasons supporters often cite a need for Charitable Choice is so that small religious providers will be able to participate in government grant programs. Contrary to these assertions, Charitable Choice does absolutely nothing to increase participation by small religious organizations in social service programs. They still have to navigate the grant process- writing and submitting a grant; setting up accounting procedures; administering the program, etc. Small religious organizations as well as small neighborhood organizations will continue to face difficulties without adequate technical assistance irrespective of Charitable Choice on the law books.

In reality, Charitable Choice seeks to alter the long standing relationship between church and state by allowing the sponsors of federally funded programs to advance their religion during the programs and by allowing discrimination in employment paid for with federal dollars.

The issue concerning the President's Faith-Based Initiative and H.R. 7 is not if religious organizations should participate or if we should expand community efforts to deal with serious social problems, we should and they do now. There is broad bipartisan agreement on this. Rather, the fundamental difference in what Charitable Choice does differently from current law is two things: allows proselytization during the program and employment discrimination with federal funds.

Before we can intelligently discuss the pro's and con's of Charitable Choice, we must first get a straight answer to a fundamental question: are you funding the faith or not?

At a Notre Dame commencement speech, the President recently said "[g]overnment should never fund the teaching of faith, but it should support the good works of the faithful." Furthermore, the legislation itself prohibits federal funds being used to pay for proselytization. But if government is not "funding the faith", then there is no need to discuss the preservation of the religious character of the sponsoring organization; there is no need to provide separate, secular services elsewhere; there is no need to discriminate in employment; in fact, there is no need for Charitable Choice. If the government is not funding the faith, organizations can receive funding just as Habitat for Humanity does now, without Charitable Choice.

Unfortunately, the provision in Charitable Choice guaranteeing the right to retain the religious character of the sponsor also guarantees that the program will promote religious views. And the prohibition against using the federal funds for proselytization does not prevent volunteers from taking advantage of the captured audience and converting the federal program into a virtual worship service.

Furthermore, many of the supporters of Charitable Choice acknowledge that the religious experience is exactly what is being funded. At a forum a few months ago, my friend Senator Santorum, the main Senate sponsor of Charitable Choice, criticized me for not recognizing that with some drug rehabilitation programs "religion here is a methodology". And John DiIulio indicated in an interview with the Associated Press in April that while "it was 'more appropriate' for pervasively religious programs to be paid for with vouchers but if they want to apply for direct grants, 'fine'". Also, in April an ad hoc of 35 different conservative organizations formed to support the President's Faith-Based Initiative issued a statement of principles that included the provision that ". . . a faith-based organization that accomplishes socially beneficial purposes *through a pervasively religious approach* may receive funding for other purposes equivalent to what other faith-based or secular government

grantees receive." [1] At recent Congressional hearings, sponsors have explained that their programs are successful because of the religious nature of the program. And my House colleague, Congressman J.C. Watts, who has been one of the earliest supporters of Charitable Choice, has previously introduced versions of Charitable Choice for drug treatment programs where beneficiaries can be forced to participate in religious activities *as a requirement for receiving publicly funded services.* (See H.R. 3467, 104th Congress) In addition, he and others have pointed that programs, like Victory Fellowship where religion is the course of treatment for substance abuse, as exactly the kinds of programs Charitable Choice is designed to fund.

Yet, how are we to fit these statements with the President's statement "[g]overnment should never fund the teaching of faith, but it should support the good works of the faithful"? Or with Department of Justice testimony last week before the Subcommittee on the Constitution that absolutely no religious activity, funded privately or not, could occur during the government funded program?

Chairman Herger and Chairman McCrery, you have to answer the question: are you funding the faith or not. If not, then you don't need Charitable Choice. If so, then we have to candidly address the Establishment Clause of the First Amendment implications of having government officials pick and choose between religions to see which faith will be advanced during a government sponsored program.

There is another important policy question that has to be addressed: should we allow employment discrimination in a federally funded program?

There was a time when some Americans, because of their religion, were not considered qualified for certain jobs. In fact, before 1960 it was thought that a Catholic could not be elected President. And before the civil rights laws of 1960s, people of certain religions routinely suffered invidious discrimination when they sought employment. Sixty years ago this month, President Roosevelt established the principal in an executive order that you cannot discriminate in government defense contracts on the basis of race, religion, color or national origin, and the civil rights laws of the 1960s outlawed schemes which allowed job applicants to be rejected solely because of their religious beliefs.

Some of us are frankly shocked that we would even have to debate whether sponsors of a federal program can discriminate in hiring. But then we remember that passage of the civil rights laws in the 1960s was not unanimous, and it is clear that we now are using Charitable Choice to redebate the passage of basic anti-discrimination laws. I believe that publicly funded employment discrimination was wrong in the 1960's and it is still wrong.

Some have suggested that organizations should be able to discriminate in employment to select employees who share their vision and philosophy. Under current civil rights law you can discriminate against a person based on their views on environment, views on abortion or gun control. You can also select staff based on their commitment to serve the poor or whether you think they can have compassion to help others kick drugs. But because of a sorry history of discrimination against certain Americans, we have had to establish "protected classes" and under present law you cannot discriminate against an individual based on race, sex, national origin, or religion.

The current exemption under Title VII for religious organizations is a common sense provision which allows religious organizations to discriminate based on religion for hiring purposes. For example, when a Catholic church hires a priest, they can of course require that the job applicant be Catholic. This exemption, however, was intended to apply to the use of private funds of the religious organization, and it was never expected to apply to the use of federal funds.

In addition to the insulting prospect that otherwise perfectly qualified job applicants in a federally sponsored program would be denied employment because of their religion, there are other civil rights considerations, in terms of gender and race, that should be considered. The courts have read a constitutionally based 'ministerial exception' into Title VII that excludes some employment decisions by religious organizations from *all of the provisions* in Title VII—thus allowing discrimination on the basis of race, gender and national origin by religious organizations. It is unclear how the "ministerial exception" would effect the civil rights of an applicant for a job paid for with federal funds under Charitable Choice.

Chairman Herger and McCrery, I would submit the testimony of Wade Henderson of the Leadership Conference on Civil Rights before the Senate Judiciary Committee as part of my testimony here. His testimony outlines the significant civil rights problems contained in HR 7 which I recommend for the Committee's review before proceeding further with this legislation.

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[1] Free Congress Foundation, Press Release on "FCF's Marshner Chairs New Coalition to Support Faith-Based Initiatives," April 12, 2001

Some will suggest that Charitable Choice is no different than present law which allows religiously affiliated hospitals and colleges to receive public funds and discriminate in some of their high level positions. *Siegel* v. *Truett-McConnell College, Inc.,* provides the distinction for us. The plaintiff argued that the college received substantial funds from federal and state sources, such as Pell grants, and therefore was not entitled to the Title VII exemption. The Court ruled in favor of the college noting that "there was no 'direct federal or state subsidy . . .' and that '[t]he government does not directly pay for any one teacher's salary, including Mr. Siegel's.'" The court went on to distinguish this case involving indirect benefit (where students choose their college) from a direct benefit (where government provides a direct contract for services). If Charitable Choice were a voucher program (where the drug addict selects which program to participate in), rather than a grant program (where the government selects the program), the analysis might be different. But there is no question that there should be no discrimination in programs selected by the government to provide services.

There are other policy considerations that have received little debate or review but are nonetheless worthy of the Committee's attention as it relates to Charitable Choice proposals.

Preemption of Local and State Nondiscrimination Employment Laws:

Notwithstanding the Title VII problem in HR 7, there remains language in the bill that supporters of Charitable Choice have argued would override local and state nondiscrimination employment laws.

"Question 1: Do FBOs have to comply with state and local nondiscrimination laws?

Yes, except where an employment practice is motivated by the FBO's sincerely held religious beliefs. States and municipalities often have nondiscrimination laws and procurement policies enacted pursuant to governmental spending power. When these spending-power laws do not permit FBOs to select staff on the basis of faith commitments, the laws are not enforceable against FBOs acting pursuant to charitable choice contracts or grants. This is because the federal statutory guarantees in § 604a that promise to protect the 'religious character' of FBOs preempt contrary provisions in state and local laws." [2]

State Constitutional Preemption:

H.R. 7 would preempt many state constitutional provisions and laws. The provisions of the Watts-Hall Bill mandating the granting of funds to religious organizations and allowing such organizations to discriminate in employment on the basis of religious tenets are in clear conflict with many state constitutional, statutory, and regulatory provisions which prohibit states from granting funds to or contracting with organizations that are sectarian in character or that discriminate in employment for religious reasons on the basis of religion or other characteristics. "Even without an express provision for preemption . . . state law is naturally preempted to the extent of any conflict with a federal statute." *Crosby* v. *National Foreign Trade Council,* 530 U.S. 363, *373 (2000). The Supreme Court "will find preemption where it is impossible for a private party to comply with both state and federal law." Id.

Preemption of State/Local Contracting Requirements Reflecting Diversity:

Proponents of Charitable Choice have also argued that its provisions, including those contained in HR 7, override state or local requirements for culturally diverse providers.

"Q. May a state or locality require that the governing board of a faith-based provider reflect the ethnic, gender, or cultural diversity of the community or beneficiaries?

A. No. Such matters of internal governance are under the control of the faith-based organization." [3]

Privatization Issue:

As we begin to implement existing programs containing Charitable Choice and contemplate adding this provision to other federal programs, we must contemplate the privatization issues that may arise as more and more government services are

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[2] Esbeck, Carl H. "Isn't Charitable Choice Government-Funded Employment Discrimination," Christian Legal Society.

[3] "The Rules of Section 104 of the 1996 Federal Welfare Law Governing State Cooperation with Faith-based Social-Service Providers," The Center for Public Justice, 1997.

contracted out to private providers, including those who are religious. For example, efforts are usually made to place dislocated public workers with the private contract providers. With Charitable Choice, however, workers who are otherwise qualified may not be eligible for employment at the private religious provider due to differences in religion.

Professional Licensing Standards:

Licensing is generally the purview of states and localities. Previous versions of Charitable Choice have sought to override state educational and licensing requirements for drug counselors of religious providers. While those attempts have been largely rejected, there still remains the issue of licensing across the multitude of programs. Religious providers performing privately funded services have often been accorded exemptions from various state and local licensing requirements. A review should be undertaken to see what exemptions are in place at the state and local level and if those exemptions would remain in place when operating a public program.

From these and other issues raised by the testimony you will hear today, Charitable Choice presents us with an array of difficult legal, ethical, and policy issues. More fundamentally though, Charitable Choice represents an historic reversal of decades of progress in civil rights enforcement. The President and supporters of Charitable Choice have promised to invest needed resources in our inner cities, but it is insulting to suggest that we cannot get those investments, unless we turn the clock back on our civil rights.

Chairman Herger and McCrery, I thank you for holding this hearing and thank you for your courtesy in allowing me to participate.

Statement of Wade Henderson, Executive, Leadership Conference on Civil Rights

Mr. Chairman and Members of the Committee: My name is Wade Henderson and I am the Executive Director of the Leadership Conference on Civil Rights (LCCR). I also serve as Counsel to the Leadership Conference Education Fund (LCEF). I am pleased to appear before you today on behalf of the Leadership Conference to discuss the charitable choice provisions in the Bush Administration's "faith-based initiative;" and to discuss the potential harm to civil rights laws that could result from the failure to consider appropriate safeguards.

The Leadership Conference on Civil Rights is the nation's oldest, largest, and most diverse coalition of organizations committed to the protection of civil and human rights in the United States. Since its establishment in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, three civil rights leaders who would eventually receive the Presidential Medal of Freedom, the Leadership Conference has promoted the passage, and monitored the implementation, of laws designed to achieve equality under law for all persons in the United States. LCEF was founded in 1969 as the education arm of the civil rights coalition and continues to fill that role today.

Today, the Leadership Conference consists of over 180 organizations working in concert to advance the cause of equality. Our coalition includes groups representing persons of color, women, labor organizations, persons with disabilities, older Americans, gay men and lesbians, major religious groups, and civil liberties and human rights interests. It is a privilege to represent the civil and human rights community in addressing the Committee today.

We would like to make clear at the outset of this testimony that the Leadership Conference approaches this issue with great respect for the many religiously-affiliated organizations, such as Catholic Charities USA, United Jewish Communities, and Lutheran Social Services, that have long received federal, state, and local funds to serve important needs in our communities. The charitable choice provisions under consideration today will have no effect on the important work of these well-known organizations. Moreover, to my knowledge, none of the Leadership Conference members that oppose charitable choice are seeking to change, in any way, the operations of the several religiously-affiliated groups that already participate in federal programs.

We also strongly support the fundamental principle that our nation's privately-funded religious organizations—our churches, synagogues, mosques, and other houses of worship—should always enjoy the constitutional freedom to pursue their religious missions through their ministries to our communities. The Leadership Conference and many of its members have supported religious freedom with our own long history of working toward laws that protect religious exercise, including the right of each person to be free from discrimination based on religion. Further,

I would add that, as with the religiously-affiliated groups, no one opposed to charitable choice is seeking to change the way any of these privately-funded religious groups operate.

The Leadership Conference also would like to take this opportunity to offer its commitment to work with members of the Senate Judiciary Committee to find a better, non-discriminatory way to ensure that federal money goes to whichever organization can best serve a community's needs and is willing to abide by the laws that apply to federal contracts and grants. We understand the frustration of the many smaller privately-funded service providers, both religiously-affiliated and secular, who feel excluded from federal programs because the regulatory hurdles seem too high. We believe that we can find an appropriate way to bring these groups into federal programs, even as we remain committed to civil rights protections and other necessary safeguards. We believe that such a "win-win" solution is possible, and is well worth all of our efforts to find it.

CHARITABLE CHOICE: A NEW THREAT TO CIVIL RIGHTS

The Leadership Conference believes that the employment provision of charitable choice threatens a cornerstone principle of our nation's civil rights laws, i.e., that federal funds generally will not go to persons who discriminate against others. It is hard to overstate the importance of our national commitment to this principle. Not only should all of us be free from discrimination by the government itself, but we also should have the assurance that our government is not providing federal dollars to programs that discriminate against others.

Ironically, we are defending the principle that the government should not fund persons engaged in religious discrimination almost sixty years to the day it was first enunciated. On June 25, 1941, President Franklin D. Roosevelt signed the first Executive Order, No. 8802, prohibiting federal defense contractors from discriminating based on race, religion, color, or national origin. Not only was the Roosevelt Executive Order the beginning of a long national commitment to barring federal funds to most persons who discriminate against others, it also was the first national victory of the modern civil rights movement.

Sixty years ago, despite the increase in employment as the nation prepared for World War II and provided defense materials to the rest of the free world, minorities were largely excluded from the nation's economy. The use of federal funds as the source of all of the new economic activity compounded the injustice of discrimination. Recognizing the special harm of federal dollars going to persons who discriminate, President Roosevelt agreed to sign a landmark executive order prohibiting federal defense contractors from discriminating based on race, religion, color, or national origin.

In subsequent executive orders, President Roosevelt covered all federal contracts, including non-defense contracts; and Presidents Truman, Eisenhower, Kennedy, and Johnson expanded the protections. The current executive order is Executive Order No. 11246, which has been in effect since 1965. The executive orders also spawned scores of nondiscrimination provisions that bar discrimination in specific federal programs, and influenced the development of agency rules that prohibit discrimination by federal contractors and grantees.

It is this fundamental principle of non-discrimination, reflected first in these executive orders, and later, in the host of civil rights statutes that ban discrimination by recipients of federal funds, that we are committed to protecting here today. Based on our review of the development of charitable choice legislation, the Leadership Conference has concluded that charitable choice threatens to erode that fundamental principle by allowing federal funds to go to persons who discriminate in employment based on religion.

The core of the charitable choice provisions of the faith-based initiative is its anti-civil rights employment provision. For example, the charitable choice provision in S. 304, the "Drug Abuse Education, Prevention, and Treatment Act of 2001" provides that the Title VII exemption for religious organizations—which permits religious employers to prefer members of their own religion—"shall not be affected by the religious organization's provision of assistance under, or receipt of funds from, a program" described in the legislation. Allowing Title VII's religious exemption to be applied to staffing decisions by federally-funded religious organizations would result in a harmful exception to the longstanding principle that federal funds generally may not go to persons who discriminate.

The objective of charitable choice is to push aside every other statutory and regulatory protection against religious discrimination. The sixty years of developed civil rights protections against federal funds going to persons who discriminate in employment based on religion will have no place in the newly authorized programs.

Thus, federally-funded religious organizations participating in these programs could fire, or refuse to hire, anyone who did not belong to the employer's religion.

Charitable choice could further undermine the nation's civil rights protections by allowing federally-funded religious organizations to require employees to adhere to the religious practices of the federally-funded religious organization. For example, several courts have interpreted the religious organization exemption in Title VII to allow a religious employer to require employees to adhere to the teachings and tenets of the religion. The "religious practices" requirement could create a conflict with the enforcement of civil rights laws protecting persons against discrimination on the basis of characteristics such as race, gender, pregnancy status, sexual orientation, or marital status.

These are conflicts that the country can and should avoid. Our nation already went through over a decade of litigation to determine whether Bob Jones University's claim that it had a religious right to discriminate against persons on the basis of race overrode the federal government's interest in denying preferred tax status to groups that discriminate based on race. *Bob Jones Univ.* v. *United States,* 461 U.S. 574, 604 (1983). Although Bob Jones University lost that case, we know that other religious institutions have claimed a religious basis for discriminating against others based on gender and pregnancy status, see *Boyd* v. *Harding Academy of Memphis, Inc.,* 88 F.3d 410 (6th Cir. 1996) (a religiously-affiliated school could dismiss an unmarried, pregnant teacher because premarital sex was against the church's teachings); marital status, see *Little* v. *Wuerl,* 929 F.2d 944, 951 (3rd Cir. 1991) (a religiously-affiliated school could fire a teacher who did not have her marriage annulled in accordance with the religion's practices); and sexual orientation, see *Hall* v. *Baptist Memorial Health Care Corp.,* 215 F.3d 618, 625 (6th Cir. 2000) (a religiously-affiliated school could fire a school counselor after she attained a leadership position in a church that accepted gay and lesbian members). In addition, the Leadership Conference does not want to risk reopening the possibility that groups that discriminate based on race, like Bob Jones University could now prevail under charitable choice.

As bad as the problems are with the charitable choice provision in S. 304, they can get even worse. For example, some have suggested amending S. 304 to include the employment provision from H.R. 7, the "Community Solutions Act of 2001," which the Bush Administration endorsed as the legislative vehicle for its faith-based initiative. The employment provision in H.R. 7 is even more sweeping than the corresponding provision in S. 304. H.R. 7 provides that, for twelve federal program areas, "[i]n order to aid in the preservation of its religious character, a religious organization that provides assistance under a program described in subsection (c)(4) may, *notwithstanding any other provision of law,* require that its employees adhere to the religious practices of the organization." H.R. 7, 107th Cong. § 201 at pp. 22-23 (2001). Thus, the employment provision in H.R. 7 squarely seeks to override all other civil rights laws that protect against religious discrimination.

Supporters of H.R. 7 have pointed to a provision, not included in S. 304, that purportedly saves a short list of civil rights statutes from the effect of its otherwise sweeping employment provision. Thus, laws such as Title VI of the Civil Rights Act of 1964, the Rehabilitation Act, and Title IX of the Education Amendment of 1972 would continue to apply to all providers under H.R. 7.

However, that savings provision would not provide meaningful protection against employment discrimination. None of the cited laws provide any protection against employment discrimination based on religion, sex, pregnancy status, marital status, or sexual orientation. In addition, the Rehabilitation Act incorporates by reference the employment provisions of the Americans with Disabilities Act, which allows religious employers to prefer members of their own religion.

Moreover, Title VI of the Civil Rights Act of 1964 provides only incomplete protection against employment discrimination based on race in federal programs and activities. Title VI's prohibition against discrimination based on race, color, and national origin in federal programs and activities includes employment discrimination only "where a primary objective of the Federal financial assistance is to provide employment." 42 U.S.C. § 2000d-3. As a result, a federally-funded religious organization could apply the H.R. 7 employment provision in firing a person who refused to adhere to the religious organization's racially discriminatory practices. Unless a primary objective of the federal program was to create employment, the fired employee would have no recourse under Title VI, Title VII, or any other federal civil rights law. Thus, not only could race discrimination occur with no federal remedy, but the person engaging in race discrimination could receive federal dollars.

CHARITABLE CHOICE GOES FAR BEYOND CURRENT LAW

The Leadership Conference would also like to take this opportunity to address directly two arguments which have been offered to counter our position against charitable choice legislation. First, we do not seek to use this legislation to undo any of the exceptions to fair employment laws currently available to religious organizations. Second, the provision of federal funds to certain religiously-affiliated organizations, does not support allowing religious discrimination by providers of other federal services.

On the first point, the Leadership Conference and its members have no intention of eliminating any of the statutory exemptions for religious organizations to prefer members of their own religion in employment. Moreover, many of those exemptions are constitutionally compelled as a means of ensuring free exercise of religion. Although individual members of the Leadership Conference may disagree on the scope of a few of the exemptions, we know of no current or planned efforts by anyone to seek legislation to reduce or eliminate these exemptions.

On the second point, although many religiously-affiliated organizations receive federal funds, most of these organizations follow the same rules as every other federally-funded service provider, including an agreement not to discriminate based on religion. However, other organizations, such as certain universities and hospitals, receive federal funds in the form of student aid grants and Medicare payments that the courts view as aid to the beneficiary, rather than aid to the institution. Thus, some courts have held that many of those organizations do not have to comply with all of the requirements that apply to federal contractors and grantees. In addition, many religiously-affiliated universities, hospitals, and other service providers organize themselves in ways that partition religious activities from secular activities, and claim a religious organization exemption for some parts of the organization, but not others. These practices are not analogous to charitable choice.

There certainly may be individual contractors or grantees or specific programs or administrators which authorize religious discrimination in a federal program or activity. However, even if such discrimination occurs, it is not necessarily constitutional, legal, or wise. Simply finding an instance of a federal contractor or grantee discriminating based on religion is not itself a reason to legislate more opportunities for new harms.

FINDING A BETTER WAY

We believe that there are better ways to bring more groups into the important work of providing social services to communities in need. The Leadership Conference offers its cooperation and assistance in developing new legislation to assist smaller providers of social services—both religiously-affiliated and secular—in gaining easier access to federal programs. We appreciate how intimidating programmatic requirements, including civil rights safeguards, may appear to organizations that have never participated in federal programs. However, we believe that the successful participation of many religiously-affiliated organizations in federal programs—groups such as Catholic Charities, United Jewish Communities, and Lutheran Social Services—provides a good model for further legislation.

New legislation could include provisions for: (1) technical assistance in setting up a service provider, locating grant and contract opportunities, and applying for grants and contracts; (2) clear statements of responsibilities and liabilities of federal contractors and grantees; (3) specific models for how federal contractors and grantees can comply with civil rights laws and other safeguards; and (4) waiver of any incorporation or application fees for small nonprofits.

Of course, these suggestions are not exhaustive. However, we hope to work with members of the Committee in developing these and other ideas into new legislation that would meet many of the objectives of charitable choice, even as federal contractors and grantees would continue to comply with civil rights and other safeguards. Thank you again for the opportunity to testify before you.

[The attachments are being retained in the Committee files.]

Chairman HERGER. Without objection. And the gentleman's time has expired, and I thank you for your testimony, Mr. Scott.

At this time, we will hear from the principal author of the legislation, the gentleman from Oklahoma, Mr. Watts.

STATEMENT OF THE HON. J.C. WATTS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. WATTS. Thank you, Mr. Chairman. And to the Chairs and to the ranking members and other members on the Committees, thank you very much for holding these important hearings today on H.R. 7, the Community Solutions Act.

It is a great privilege to be here with my friend and colleague Tony Hall, who has sponsored this bill with me. Tony has a long and respected history of reaching out to the underprivileged and seeking solutions to poverty and hunger in America and around the world, so I am delighted to work with him on this initiative.

And I am also delighted to be here as well with six of my other colleagues in the House, some who support H.R. 7 and some who don't support H.R. 7.

Ladies and gentlemen, last year the Congress passed the Community Renewal Act that I had cosponsored with Congressmen Danny Davis of Chicago and Jim Talent of St. Louis. We introduced that legislation and fought for its passage because after a decade of uninterrupted growth and prosperity across the Nation, there were still communities in America that had been bypassed by the so-called new economy.

H.R. 7, the Community Solutions Act, moves another step forward to fulfilling the goals and incentives of the Community Renewal Act. This legislation is crafted to increase charitable giving, to create asset building, financial structures for the working poor, and to form new partnerships between the government and community and faith-based organizations in helping the poor.

The Community Solutions Act will strengthen our ability to serve the poor and the homeless, the addicted and the hungry, the unemployed, victims of violence, and all those we are called to help.

Our Nation is blessed with tens of thousands of devoted individuals who work with the poor on a daily basis, through community and faith-based organizations. They work in the neighborhoods, on the street corners, in the shelters, in the soup kitchens, shirtsleeves rolled up, literally extending a helping hand to those on their doorsteps who have lost so much hope.

They operate thousands of centers throughout the country which provide services to the underprivileged. In many neighborhoods, these centers are centers of hope in an otherwise desolate landscape.

We are proud to have the endorsement of such groups as has been mentioned: Habitat for Humanity, the Salvation Army, who are perhaps the most recognizable of the thousands of groups who provide these services.

The Community Solutions Act invites these courageous and selfless men and women to partner with the government and help us to find those in need and deliver vital services to them.

And as Congressman Hall mentioned, in many of the communities, your faith-based organizations are the only organizations that will go into these communities.

This legislation also provides important tax incentives to increase charitable giving by allowing nonitemizers to deduct charitable contributions, a bipartisan proposal that originated with Congressman Phil Crane. A charitable deduction for taxpayers who do

not itemize seems not only good public policy but also a matter of simple fairness for more moderate-income Americans who use the standard deduction but contribute to charities and receive no tax relief for doing so.

The Community Solutions Act will give these individuals equal standing with wealthier taxpayers.

Another important provision of H.R. 7 is the creation of individual development accounts that will help low-income families to accumulate assets. This is a critical stepping stone for the working poor to escape poverty. These individual development accounts will allow these individuals to build the funds they need to buy a first home, to start a business or maybe to expand a business, or to pay tuition expenses.

Today's witness list is impressive. And better than I, they can tell you how this legislation will help them and help society fulfill its commitments and its duty to guarantee every American an equal opportunity to succeed.

Mr. Chairman, I appreciate your holding these hearings today.

And just, briefly, you know, I have heard a lot of concern about what the legislation does, what it does about proselytizing. There is language in the legislation that says that you can't proselytize.

We talk a lot about discrimination, well, the bottom-line is, today we allow discrimination against people because they are people of faith. We say to them: You cannot compete for certain dollars when it comes to delivering community services because you wear a collar or because you are a person of faith.

And I got to tell you, I think that is ridiculous. If we are concerned about discrimination, we ought to go through the whole gamut and say let's not discriminate against people just because of faith.

If they can help, if they can assist, if they can do what we morally should be doing—helping the poor, helping the hungry, helping the homeless—why would we discriminate against them and say, "You can't help because you're a person of faith."

We talk about mingling funds. There is language in the legislation that says you have to segregate the accounts. You know, there is no faith-based organization out there that wants the government to come in and look at their books that they use to operate their church, to have education programs in that church, outreach programs in the church. That is a totally separate account. That is a separate entity.

That is not what we are talking about doing. These organizations should have an opportunity to compete and to assist.

And, Mr. Chairman, I thank you again for holding this hearing today.

[The prepared statement of Mr. Watts follows:]

Statement of the Hon. J.C. Watts, Jr., a Representative in Congress from the State of Oklahoma

Thank you for holding these important hearings today on H.R. 7, the Community Solutions Act. It is a great privilege to be here with my friend and colleague, Tony Hall, who has sponsored this bill with me. Tony has a long and respected history of reaching out to the underprivileged and seeking solutions to poverty and hunger in America and around the world, so I am delighted to work with him on this initiative.

Ladies and Gentlemen, last year the Congress passed the Community Renewal Act that I had cosponsored with Congressmen Danny Davis of Chicago and Jim Talent of St. Louis. We introduced that legislation and fought for its passage because, after a decade of uninterrupted growth and prosperity across the nation, there were still communities in America that had been bypassed by the so-called New Economy.

H.R. 7, the Community Solutions Act, moves another step forward to fulfilling the goals and incentives of the Community Renewal Act. This legislation is crafted to increase charitable giving, to create asset-building financial structures for the working poor, and to form new partnerships between the government and community and faith-based organizations in helping the poor.

The Community Solutions Act will strengthen our ability to serve the poor and the homeless, the addicted and the hungry, the unemployed, victims of violence and all those we are called upon to help.

Our nation is blessed with tens of thousands of devoted individuals who work with the poor on a daily basis through community and faith-based organizations. They work in the neighborhoods, on the street corners, in the shelters and the soup kitchens, shirtsleeves rolled up, literally extending a helping hand to those on their doorsteps who have lost hope.

They operate thousands of centers throughout the country which provide services to the underprivileged. In many neighborhoods these centers are centers of hope in an otherwise desolate landscape. We are proud to have the endorsement of such groups as Habitat for Humanity and the Salvation Army who are perhaps the most recognizable of the thousands of groups who provide these services.

The Community Solutions Act invites these courageous and selfless men and women to partner with the government and help us find those in need and deliver vital services to them.

The legislation also provides important tax incentives to increase charitable giving by allowing non-itemizers to deduct charitable contributions—a bipartisan proposal that originated with Congressman Phil Crane.

A charitable deduction for taxpayers who do not itemize seems not only good public policy but also a matter of simple fairness for more moderate income Americans who use the standard deduction but contribute to charities and receive no tax relief for doing so. The Community Solutions Act will give these individuals equal standing with wealthier taxpayers.

Another important provision of H.R. 7 is the creation of Individual Development Accounts that will help low-income families accumulate assets. It is only by building assets that individuals can establish their economic independence and work toward a better future for themselves and for their children.

This is a critical stepping stone for the working poor to escape poverty, and these IDAs will allow these individuals to build the funds they need to buy a first home, to start or expand a business or to pay tuition expenses.

Today's witness list is impressive, and better than I, they can tell you how this legislation will help them and help society fulfill its commitments and its duty to guarantee every American an equal opportunity to succeed. Mr. Chairmen, thank you for holding these hearings today and thank you for your support.

Chairman HERGER. Thank you, Mr. Watts. And I want to thank each of our colleagues for their very outstanding testimony.

Are there any here who would like to inquire? Mr. McCrery?

Chairman MCCRERY. I just have one question. Mr. Watts and Mr. Hall maybe could address this.

There has been some remarks made about there is no extra funding for these programs. And while that may be true, I thought part of the purpose of the legislation was to utilize networks of organizations that are already out there in the community doing that work so that we don't have to rebuild that and that we might deliver these services in a more efficient way, which would actually allow the dollars we are currently spending to go further. Am I incorrect on that?

Mr. WATTS. Well, two things, Mr. Chairman. One, you are encouraging charitable giving, so you will have more dollars given to

these organizations. And, two, even if there is no new funding, I think the essence of what we are saying is, allow charitable organizations, faith-based organizations, to compete for existing dollars.

These charitable organizations, they are not beating our doors down, saying, go and take dollars from defense or take dollars from education. My plea is to allow them to compete for the existing dollars. Again, I think that makes sense.

Mr. HALL. I would only add, Mr. Chairman, that this bill used to have a Compassionate Capital Fund in it. And it was a fund that would ask for not only extra moneys, but also have it matched by the private sector, to help with the kinds of things that Mr. Cardin was talking about, the technical aspects of a small group trying to receive a Federal grant, what they have to do. I think that is a very, very good point that Mr. Cardin made.

Actually, in the budget, there is money in the budget that is extra money for what we used to call the Compassionate Capital Fund. That portion is actually in the Senate bill. It is not in the House bill. Maybe it could be added. I would like to see it added. There is like $89 million in the budget set aside for that.

I think it would be great to use that money at first to help these small groups. And I think it would go a long way in especially some of the small groups to help them with the paperwork and the bureaucracy that they have to go through to take a lot of this burden away, because they are just doing their job. They want to do their job.

Mr. NADLER. Mr. Chairman, let me comment on that, if I may.

One of the key points of this bill is the contention that pervasively sectarian organizations—churches, synagogues, et cetera—are not presently permitted to compete for Federal funds for social programs. The fact of the matter is that, except in a narrow technical sense, that is not true.

In fact, many churches do participate now. Go to anybody's district, and I am sure you will find religiously affiliated soup kitchens and homeless shelters receiving Federal money and operating out of Church basements.

The only requirement under present law is that the church, if it wants to apply for a Federal grant under an existing program, has to form a 501(c)(3) corporation, a nonprofit subsidiary, in effect, of the church. Nothing says that the board of directors cannot be the deacons of the church and the president cannot be the minister and so forth. And we all know that this is done all the time.

That is done really for the protection of the church, because a Federal program has to be properly audited and public funds accounted for to make sure that no one is wasting Federal funds. And I think the members of the Committee would be the first to say that we do not want Federal funds wasted and spent improvidently and so forth.

And you want to segregate that from the religious aspects of the church, because the church should not want the Federal auditors and accountants saying, "Well, maybe you should have paid the minister a little less money. His salary is a little high." And so the 501(c)(3) does that.

Now, some people have said that setting up a 501(c)(3), which is a very simple thing to do, is a little complicated, and a small

church cannot do that. Well, there is nothing wrong, from my point of view, with setting up some sort of aid program, as Mr. Hall was suggesting, to help the churches set up 501(c)(3)s if they want.

But it is important, as a protective mechanism for the church and their religious autonomy and religious freedom, to have some organizational separation. The Federal auditors will look at federally funded activities; those funds, which are used for the church's religious purposes, the Federal auditors have no business looking at.

And if you simply say that it is going to be a separate bank account, that is not a sufficient protection for the church.

So, I frankly do not think that the issue that the churches are discriminated against is a real issue. They are not; and they should not be. As I said in my testimony, the Fifth Avenue Baptist Church should be permitted to apply for a drug rehab grant or a soup kitchen or whatever grant on the same basis as the Fifth Avenue Block Association. However, they have to have the Fifth Avenue Baptist Church Drug Rehab Committee, Inc., more as a protection for the church and religious protection of the church than anything else.

And, again, if we want to help them with the paperwork to set up the 501(c)(3), the denominations can do that. I would see nothing wrong with the government setting up some sort of assistance to do that either.

Chairman HERGER. Thank you for your testimony, all of you. Mr. Cardin to inquire.

Mr. CARDIN. Thank you, Mr. Chairman.

Let me thank all of our colleagues for their testimony.

I must tell you, I don't disagree with pretty much everything that each of my colleagues have brought to our attention. I agree with your points.

First, let me underscore the point that Mr. McNulty made a little bit earlier. And that is, I don't think it would difficult for us to reach and agreement on the tax provisions.

Ms. Dunn, I am proud to be your cosponsor on the medical research provision.

I think there is a lot we can do on the tax side, as long as we can find a way to fit it into the budget and pay for these particular provisions, to make sure they are cost-effective.

On the charitable choice provisions, and I think, Mr. Watts, I agree with you. We should read what is in the bill, and we should try to deal with the provisions and find out what we need.

I had a chance to talk to Mr. Hall. I think we should provide additional resources. When you look at, particularly, the small faith-based groups, they need technical help in understanding the Federal grant process and to make sure that they don't fall into traps under our Constitution. And I think that would be a wise use public funds.

But, if you look, we are not creating a level playingfield under charitable choice. We are giving faith-based groups certain rights that I am not sure are needed.

Mr. Watts, if you want to respond to this, I would be happy.

Mr. Hall, I would be happy to hear.

But one of the things you are allowing them to do is bring civil actions pursuant to section 1979 against the official or government agency that has allegedly committed a violation under this act. And I must tell you, in my discussions with or neighborhood churches who want to get involved in this, I am not sure they want the opportunity to bring lawsuits.

So, I would be curious as to why that is needed.

The second is the point that Mr. Scott raised, and that is the employment discrimination.

Again, in talking to my small, faith-based groups, they don't need employment discrimination protection. It is not the priest or the rabbi or the minister we are talking about; we are talking about the drug counselor or the social worker. And the groups want to hire the best people. I don't know why they need employment discrimination protection.

So I guess my point is, on the charitable choice provisions, I think we could reach some common ground. But if somebody could explain to me why you need employment discrimination protection, or why you need the right to file lawsuits against government official? The faith-based groups have those additional provisions in the bill, but it does not apply to the secular groups.

Mr. WATTS. Mr. Cardin, on the liability issue, that is still a concern that we are trying to work through and trying to negotiate. We have the Justice Department and others taking a look at that.

But, on the issue of discrimination, the 1964 Civil Rights Act gave religion a waiver. I am not trying to challenge that—Congressman Hall nor myself are not trying to challenge that in this legislation.

But concerning the issue of discrimination, we have many organizations out there today that receive Federal funds, secular organizations. And I think we have to use some common sense in this equation.

Let's take Planned Parenthood. They receive Federal dollars. I am going to pick on my good friend Alan Keyes, and I don't think he would mind me picking on him. Alan Keyes is adamantly pro-life. I never hear anybody saying to Planned Parenthood that they should hire Alan Keyes to be their executive director. They would discriminate against Dr. Keyes because he is adamantly pro-life.

So, therefore, we should not fund Planned Parenthood, or should not give them Federal dollars, because they would discriminate against Dr. Keyes because he is pro-life.

Mr. CARDIN. Mr. Watts, that is not a protected right. There are certain protected rights.

Racial discrimination is a protected right. Discrimination based upon sex is a protected right.

But you can discriminate against people because of their views. That is not a protected right under our system. You can do that.

Mr. WATTS. Mr. Cardin, I don't know of any organization—and we are going to hear from people who will be testifying on other panels.

I don't know of any church, any synagogue, any parish, I don't know of any faith organization that would call themselves an organization of faith that would discriminate.

Mr. CARDIN. I agree with you.

Mr. WATTS. I don't know of any organization that would be worth their salt that would deny people services because—and I am a Baptist, for what it is worth. For me to deny someone services because they disagree with my faith——

Mr. CARDIN. We are getting closer.

Mr. WATTS. So, you know, I personally believe that it is a red herring. This issue has been out there for 35-plus years. It has never been an issue until we are talking allowing faith organizations to compete for——

Mr. CARDIN. It is in your bill.

Mr. WATTS. Federal dollars.

Mr. CARDIN. The problem is, it is in the bill, the protection against employment discrimination.

Mr. WATTS. We reconfirm the civil rights laws, the 1964 Civil Rights Act.

Chairman HERGER. The gentleman's time has expired. To inquire, the gentleman from Oklahoma, Mr. Watkins.

Mr. WATKINS. I have been listening to this with a great deal of interest. I associate with my own faith and my whole faith declares that I do not discriminate. If I take scripture correctly, they are all children, in my own faith.

But let me say, as I look at this, an area that I think is discriminated against, a lot of my big city brethren don't understand it, and that is the rural and depressed areas of this country.

We do not have the vehicles. We do not have the delivery system or the technical system to get out there. The only thing out there at the crossroad is a church. Most people don't understand that.

And I hear people talking about discrimination. Out of sight, out of mind is a discrimination, as far as I am concerned. Some people don't understand that.

As long as people don't hear the faint voice out there, of not having the assistance, and a lot of our people don't feel like that is a responsibility. It is not on their radar screen, so it is not their responsibility. But I think we are called on to do that.

But I think we need to try to make sure we look at the legislation. My friend for Oklahoma, I want to say, he and Tony Hall, I have know them for a long time, and their deep commitment in trying to deliver more of the needs to those who are hurting out there. And I think they need to be applauded, to try to get opportunities for the faith-based agencies to do more, because we sure have failed, as the richest country in the world, to get a lot of these needs met.

And so I think we need to look at how we can provide the technical assistance and the vehicle of being able to meet that need out there.

Now, I don't understand New York City. I am sure that there is much—the poor, that I don't want to find myself trying to deal with because I got more problems in the economic, rural, depressed areas of Oklahoma and some other areas.

But we need to try to find ways to reach them. And I think that is what the legislation has—past legislation I know my colleague from Oklahoma has passed and adding H.R. 7 to it.

And we need to provide more avenues, as we talk about leveling the playing field. My good friend from Maryland used that term a while ago.

Rural America is discriminated against, if we want to talk about discrimination, the rural poverty areas of this country.

But that seems to be not in the vision of most people.

I would like to ask, if I could, to look into one other thing. I wanted to ask, there are two or three tax provisions—I know that most of these have been accepted. There was one that was not included, and that was to increase the limits on corporate charitable contributions, and be increased from, I think, 10 to 15 percent.

I know that was proposed, I believe, earlier by the President. And I am hoping that maybe the end product might could have that increase so we may could get more charitable situations available.

And let me say, I don't have any corporations in economic, depressed, rural America, either. I say that, kind of like financing campaigns. I don't have any of those. You have to go somewhere else to try to find, you know, find the revenue to finance things.

But those are some of the things, I think, we need to think, how do we get that assistance out there to the people in the small town, rural America, in the rural areas?

I just want to make this point, Mr. Chairman, 240 out of the top 250 poverty counties are in the rural areas in this country, and we need to figure out how we address that.

Again, I just want to commend the panel, my colleagues, the members up here, and my chairman, Wally Herger, and also Jim McCrery, who is right down in Louisiana from us, just a little bit, for having these, and for all the hours and hours and hours of work that many of you have put in, bringing this to the table.

So, thank you.

Mr. NADLER. Mr. Chairman——

Mr. HALL. Mr. Chairman, I think the gentleman, Mr. Watkins, makes a very, very good point. I mean, this bill is about all of America. It is not just money in urban areas, in the inner cities. It is help in the rural areas.

And in my testimony, I talked a little bit about this project that was in the poorest county of my State, it is not in my district, it is Vinton County. And one out of 10 people in the county is hungry.

And you go into the county, and there is not much there, from the standpoint of help. They have a video shop, I think, in the town, and 250 people applied for the job. I think it was a minimum wage job. There are no jobs. There are no programs.

And the only thing going on, that I could see, in Vinton County, was this faith-based organization out of the Methodist Church. And it was like one man with a bunch of volunteers. And if it wasn't for him, there wouldn't be much going on there.

And those are the kinds of people that we need to help. These organizations have been shut out a long time, not only in rural areas, but in inner cities. And these are the kinds of organizations we are talking about helping. And if they are doing the job, if they have a track record of doing the job, they ought to be in-line for the competition for the money as well.

Mr. NADLER. Mr. Chairman——

Chairman HERGER. I thank the gentleman. His time has expired.

Mr. NADLER. Mr. Chairman, can I answer——

Chairman HERGER. The gentleman from New York, Mr. McNulty, to inquire.

Mr. MCNULTY. Thank you, Mr. Chairman.

I just have one brief inquiry for the supporters of H.R. 7, and one for the opponents.

I am one of the Democrats, who, from the time he landed in this town, has talked about the need for balanced budgets and paying down the huge national debt. And today, I am still talking about those issues, although some of my Republican friends are talking about them less these days.

And I talk about them because I am concerned about my children and my four grandchildren, and the fact that despite the euphoria in Washington about the fact that we have had a surplus for a couple of years, we still have a $5.7 trillion national debt, upon which we paid interest payments of $329 billion last year.

So I have a question of the supporters about revenue. Have you come up with any revenue estimates for the tax provisions of the bill? By my count, there are at least five tax provisions. So my question is, have you come up with a revenue estimate for those tax provisions?

And also, related to that, have you identified any revenue offsets? And if so, what are they?

Mr. WATTS. I am sorry, Mr. McNulty, your question, if I understand correctly, was the cost of the tax provisions?

Mr. MCNULTY. Cost and any revenue offsets that you have identified in order to pay for those costs.

Mr. WATTS. I was just reconfirming with my staff. I was thinking it was about $52 billion over 10 years, and I understand it is about $52 to $55 over 10 years. We are still waiting on the Joint Tax Committee (JTC) to come up with some confirmations.

Mr. MCNULTY. Any offsets that you have identified, J.C., on those?

Mr. WATTS. Well, the——

Mr. MCNULTY. To pay for the revenue estimate?

Mr. WATTS. We have not. We are working with the respective Committees.

Mr. MCNULTY. OK.

Mr. WATTS. On that—well, we are working with the respective Committees.

Mr. MCNULTY. Fine.

And to the opponents of the bill—and I will direct this to Bobby, and then, if I have a minute or so left, I want to give it to Jerry, because I know he wanted to make a point on the last issue.

We have heard testimony this morning that employment discrimination is a longstanding right for religious organizations.

Congressman Scott, would you again clarify how that standard is different in the context of Federally funded service, for the record?

Mr. SCOTT. Sixty years ago this month, President Roosevelt signed an executive order prohibiting discrimination in Federal defense contracts. That executive order has been expanded to include other things. We passed the civil rights laws in the sixties.

And you have never since, for 60 years, been able to accept a Federal contract and then turn around and discriminate in who you hire, based on religion.

Now, the churches with the church money can do what they want. But if it is a Federal program paid for with taxpayers' money, then they can't.

And I would like to make a couple other comments, if I could.

We talked about efficiency. There is not efficiency in having two parallel programs in the same small county. But you have to first, before you get into that question, decide again whether you are funding the faith or not.

If you are not funding the faith, then the only groups being discriminated against are those faith-based organizations that discriminate in hiring, because that is the only charitable choice will give you. If it is not giving you proselytization during the program, then the only thing it gives you is discrimination.

The gentleman from Maryland went to great lengths to describe the difference between protective classes and other kinds of discrimination, but in the original Watts-Talent bill, there was discrimination against beneficiaries, that you could require, as a condition of participation, following the religious protocol. If you didn't want to do that, you couldn't participate.

Mr. MCNULTY. Thank you, Bobby. I want to yield to Jerry for a moment.

Mr. NADLER. Thank you. I would like to comment or rather answer, the question that Mr. Watkins raised. In rural America—indeed, in urban America, too; there is no difference—faith affiliated organizations are very often the best organizations, sometimes the only organizations, meeting certain social needs. And, yes, we want to fund social programs through the faith-based organizations as through other organizations. And we do, under the current law.

The question, with respect to the proposals, are:

One, should you remove the protection of the church, which requires the church to establish, a subsidiary, a 501(c)(3), so that you limit the government involvement in auditing the Federal funds to the charitable function that is being funded by the Federal government, and you protect the church from the Federal auditors intruding into other aspects of the church?

Number two, right now, the church can discriminate in terms of who the cantor or the deacon or the priest or the minister is. They cannot discriminate in the 501(c)(3) in who is the janitor or who is ladling out the soup or who is running the soup program. If you do not have a 501(c)(3), then the question is, where can they discriminate? This bill would let them discriminate in all levels of employment using public money.

And finally, and I think the real nub of the question ultimately is the following——

Chairman HERGER. The gentleman's time has expired.

Mr. NADLER. May I have one additional half-minute? Thank you.

The nub of the question is the following. There are people who say the following, and they are probably right, for some people: If you are running a drug detoxification program, with some people, some drug addicts, the most effective way to get them off the drug would be to tell them, in effect, through psychotherapy, you should

stop using drugs because it is good for you, it is more healthful, it is against the law.

For other people, it may be more effective to tell them, "You should get off drugs because God wants you to," or "Jesus wants you to." And there is nothing wrong with the church doing that. But a church should not be able to do that with Federal funds.

And that is also the nub of this bill: Can they do that with Federal funds? If the answer is yes, then you have a real conflict, and you need this bill to enable them to do that. If the answer is no, you do not need this bill at all.

Chairman HERGER. The gentleman's time has expired.

Mr. NADLER. Thank you.

Chairman HERGER. I thank the gentleman from New York. And now we will move to the gentleman from Michigan, Mr. Camp, to inquire.

Mr. CAMP. Thank you, Mr. Chairman. And thank you all for testifying here today.

I guess my question is for Mr. Hall and Mr. Watts.

What are some of the positive comments you have received? I know you have had listening sessions with members, and there obviously has been a lot of discussion about this legislation, that you have received from other quarters as this has been in the public domain—positive comments with respect to changes that might occur in the bill?

Mr. HALL. Well, I think, first off, it is interesting, after we introduced the bill, there has been lots of controversy, lots of publicity. There have been lots of things that have been said that, frankly, I don't think are true.

And I have had lots of people from around the country that are faith-based organizations that I didn't even know really existed, like from my own district.

A good portion from the United Way campaign and the money that goes into the United Way campaign goes to faith-based organizations. I hadn't realized how many faith-based organizations around the country had received Federal money, State money, local money, government money. That surprised me.

Second, we don't change anything in this bill from the standpoint of the waiver that was given relative to religious institutions in 1964. In 1964, there was a waiver in the Civil Rights Act that said you can hire, if you are a faith-based organization, who you want to hire. Methodists can hire Methodists. You don't have to hire a Muslim or a Catholic or a nonbeliever.

That was about the only waiver that was given. And we put that in this bill to reemphasize the fact that we are not changing anything. We didn't have to put it in the bill. But because there was so much publicity of saying that we are discriminating, we felt that the people that were saying this were absolutely wrong.

So if you look at this bill and you look at the current law, you will see there are no changes there.

We say over and over and over again in this bill that you can't proselytize, you can't provide money for sectarian worship. And we believe that, because, in many ways, you don't have to do it.

If you are a man of faith, you don't have to say it. Just do the works. People probably will come up to you after awhile, after they figure out, "Well, why do you do this?" Then tell them.

But while you are doing the work, you don't have to tell them anything about faith at that particular time.

This is an interesting question that Bobby Scott raises about—I think his question is: Are you funding the faith or not? It is an interesting question, because most of us would say, in this country, that we do things because of good works.

Why do we feed people? Well, we do it because it is good works. It is a good thing to do. Why am I involved with hunger worldwide, in this country? I do it because of my faith.

And I work in areas that people don't even know where I work. I don't get any votes for it. I do it because of my faith.

Are you funding my salary? Yes. Should you deduct my salary, because you are funding my faith on certain things?

You do it, you help people, because of good works. Secular groups do that. We do it for political reasons. We do it for a lot of different reasons.

What we are saying here is, you can't be teaching, you can't be proselytizing, you can't be providing sectarian worship. That is what we are saying in the legislation.

If you do that, you are in trouble. You are sanctioned. You are fined. Whatever the bill says relative to criminal activity. You can't do that.

So, I have said this over and over and over again to some of my colleagues. And some of my colleagues, they say, "Well, it doesn't do that." I say, "Well, go read the bill."

But I am amazed. The most amazing thing, Mr. Camp, that I am amazed at is how many groups around this country get money from the Federal Government that are faith-based organizations. And they have been doing it for years.

But they are mostly huge organizations, big organizations. Good organizations.

You want to see discrimination, what we have today is discrimination, because groups in rural areas and in cities that are small groups, they can't get this money because it is cumbersome. There is a lot of red tape.

Part of this bill is to break that, I think.

Chairman HERGER. I thank the gentleman. Now we will recognize the gentleman from Michigan, Mr. Levin, to inquire.

Mr. LEVIN. Thank you. And this is a useful and important hearing.

And Mr. McCrery said that with our colleagues here, it was an opportunity, in the absence of the administration, to talk about these issues. And I think that is a good idea, so that is why I want to participate.

Mr. Watts, let me just cite the Joint Committee on Taxation estimate on the deduction for those who don't itemize. It is $84.363 billion. And that is for the Bush administration proposal.

And I just raise it because I think it is important that we face the issue as to how we are going to pay for these provisions.

Second, let me just say that I find it ironic that while we are talking faith-based charitable efforts, we also have been cutting

programs like the social services block grant money, a substantial portion of which goes to faith-based organizations. And if we are serious about the role of these organizations, I think we better be serious about the programs that help to fund them.

So let me, though, go back to what, Mr. Hall, you were raising this, and others have discussed it.

I don't believe it is an issue—surely this isn't an issue of faith. And I am not sure it is an issue of the role of faith-based organizations.

When I was the assistant administrator of AID, Agency for International Development, in the late seventies and early eighties, a substantial portion of our moneys went to faith-based organizations. This was for programs overseas.

But if you look at programs domestically—for example, in southeast Michigan, if you look at food programs and a lot of others—organizations that have their roots in faith are administering these programs. Focus: HOPE is an example. But they surely don't discriminate as to whom they employ.

But also, they take care not to become essentially an proselytizing effort.

So I want to ask Mr. Watts and Mr. Hall, specifically, if a drug treatment program has as part of its structure, let's say about half of its content, religious instruction, a statement of religious belief, should Federal moneys be used for that program, Mr. Watts?

Mr. WATTS. Mr. Levin, let me just share with you, because we have gotten this question, on the JCT question, this legislation can be written to comply with the $52, $55 billion figure. So that is why I shared that information.

Mr. LEVIN. OK, but now the Joint Tax analysis is there. But let's go on to the other——

Mr. WATTS. But you raised that, so I wanted clarify that.

Second, the Community Solutions Act protects exemption for religious organizations established in the Civil Rights Act 1964. That exemption simply allows religious organizations to maintain their distinct character and mission by hiring staff who share their religious beliefs.

That is the only exemption. Organizations must still comply with all Federal laws governing race, color, national origin, disability, and age.

Mr. LEVIN. That wasn't really my question, even though when an organization is distributing food, it is a little hard to understand why they should be able to discriminate in terms of the religious affiliation of an employee.

Mr. WATTS. But I wouldn't——

Mr. LEVIN. But if you would, answer the question about a drug treatment program, a substantial portion of it having a religious content, which may be the most effective way to approach drug treatment. I am not quarreling with that.

Should Federal moneys be used to fund that drug treatment program?

Mr. WATTS. Well, Mr. Levin, again, that is their distinct character. And as I mentioned earlier, I could ask the same question: Why do we fund Planned Parenthood, who would discriminate against Alan Keyes because he is pro-life, because of his faith?

Dr. Keyes, I think that is——

Mr. LEVIN. But Mr. Cardin answered that. Organizations can hire people in policy positions who agree with the policy. And it has nothing to do with Planned Parenthood.

Mr. WATTS. I think it does.

Mr. LEVIN. But answer the question about a drug treatment program, a substantial portion of which has a specific religious content. Should Federal funds be used to fund that program? Yes or no.

Mr. WATTS. I believe it should be.

Mr. LEVIN. OK.

Mr. WATTS. If they are getting results, you bet.

And let me add to that, Mr. Levin, I spoke with the Hispanic bishops from New York, about 150 of them about 3 weeks ago. And they shared with me that in one particular neighborhood they had a faith-based organization that did drug and alcohol rehabilitation. Next to them, on the same street, you had a secular organization that did drug and alcohol rehabilitation.

The faith-based facility got $115 bucks a month per individual. The secular organization got $1,500 bucks per month per individual.

So that is what I am getting at. Why would we not raise or have the same concern that your faith-based organization, in spite of the fact that they get the same results or better, why would we allow that discrimination to happen?

Chairman HERGER. The gentleman's time has expired. Thank you. We will now hear from the gentleman from Wisconsin, Mr. Ryan, to inquire.

Mr. RYAN. Thank you, Mr. Chairman, for yielding.

I am interested in this debate in that I worry that this debate is increasing the confusion surrounding this bill, not clearing the matters up.

And it seems like some are trying to suggest that there is new found discrimination that is going to all of a sudden occur where it otherwise didn't occur.

I think it is important to point out that charitable choice, which is already in law, extends Title VII of the 1964 Civil Rights Act. Charitable choice preserves the established civil rights protection for religious organizations under the 1964 act to maintain their distinct character and mission by hiring staff who share their religious beliefs.

Now, this is a longstanding right of religious organizations, to hire on the basis of religion. It is a cornerstone of a civil rights safeguard for these religious institutions.

Now, with respect to other issues of discrimination, regarding the employees of faith-based organizations, charitable choice and this proposal clearly requires that faith-based groups, like all other groups, cannot discriminate based on race, color, national origin, gender, age, and disability.

So I think that just needs to be said, because all of this talk about new found discriminations, it needs to be cleared up, to some degree.

Now, as for the idea that this will give us more competitors for a shrinking pool of Federal welfare spending or national social

spending, we have increased social welfare spending 10 times, adjusted for inflation, since the war on poverty.

So the growth—and I would like to ask unanimous consent to insert a study by Robert Rector, if I may, Mr. Chairman.

Mr. HERGER. Without objection.

[The following was subsequently received:]

Means-Tested Welfare Spending: Past and Future Growth Testimony by Robert Rector

Introduction

The U.S. welfare system may be defined as the total set of government programs—federal and state—that are designed explicitly to assist poor and low-income Americans.

Nearly all welfare programs are individually means-tested.[1] Means-tested programs restrict eligibility for benefits to persons with non-welfare income below a certain level. Individuals with non-welfare income above a specified cutoff level may not receive aid. Thus, Food Stamp and Temporary Assistance to Needy Families (TANF) benefits are means tested and constitute welfare, but Social Security benefits are not.

The current welfare system is highly complex, involving six departments: Health and Human Services (HHS), Agriculture, Housing and Urban Development (HUD), Labor, Treasury, and Education. It is not unusual for a single poor family to receive benefits from four different departments through as many as six or seven overlapping programs. For example, a family might simultaneously receive benefits from: TANF, Medicaid, food stamps, Public Housing, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Head Start, and the Social Service Block Grant. It is therefore important to examine welfare holistically. Examination of a single program or department in isolation is invariably misleading.

The Cost of the Welfare System

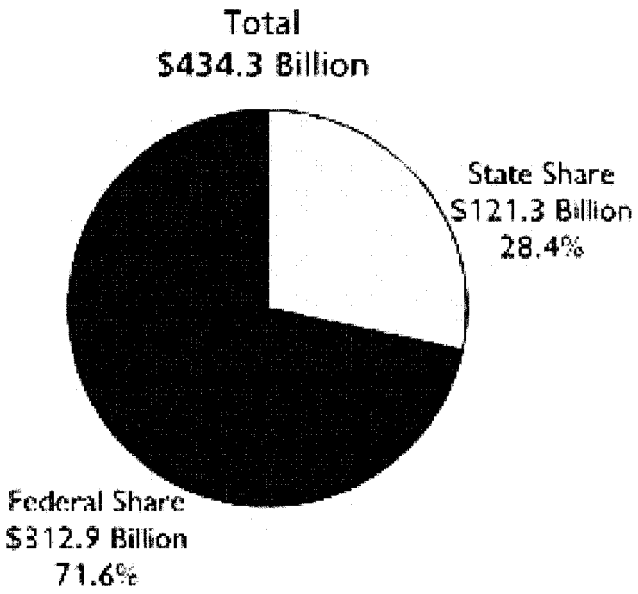
The Federal government currently runs over 70 major interrelated, means-tested welfare programs, through the six departments mentioned above. State governments contribute to many Federal programs, and some states operate small independent programs as well. Most state welfare spending is actually required by the Federal government and thus should considered as an adjunct to the Federal system. Therefore, to understand the size of the welfare state, Federal and state spending must be considered together. (A list of individual welfare programs is provided in Appendix B.)

Total Federal and state spending on welfare programs was $434 billion in FY 2000. Of that total, $313 billion (72 percent) came from Federal funding and $121 billion (28 percent) came from state or local funds. (See Chart 1.)

[1] A very small number of the programs listed in Appendix B are targeted to low income communities rather than low income individuals. While such programs are not formally means-tested they should be considered part of the overall welfare system. Only a small fraction of aggregate welfare spending is provided through such programs.

Chart 1 The Heritage Foundation

Total Welfare Spending in FY 2000



Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 2000, appendix. State outlay calculations based on locally unpaid and Heritage estimates from Congressional Research Service publications.

Welfare spending is so large it is difficult to comprehend. On average, the annual cost of the welfare system amounts to around $5,600 in taxes from each household that paid Federal income tax in 2000. Adjusting for inflation, the amount taxpayers now spend on welfare each year is greater than the value of the entire U.S. Gross National Product at the beginning of the 20th century.

The combined Federal and state welfare system now includes cash aid, food, medical aid, housing aid, energy aid, jobs and training, targeted and means-tested education, social services, and urban and community development programs.[2] As Table One shows, in FY2000:

- Medical assistance to low income persons cost $222 billion or 51 percent of total welfare spending.
- Cash, food and housing aid together cost $167 billion or 38 percent of the total.
- Social Services, training, targeted education, and community development aid cost around $47 billion or 11 percent of the total.

Table 1 The Heritage Foundation

Total Welfare Spending FY 2000
(In Billions of Dollars)

	Federal Spending	State Spending	Total Spending	Percent of Total Spending
Cash	$77.81	$22.78	$100.59	23.2%
Food	34.71	.34	36.05	8.3
Housing and Energy	28.46	2.12	30.58	7.0
Medical	130.81	90.79	221.60	51.0
Education	22.46	.34	23.80	5.5
Training	5.79	0.07	5.85	1.3
Services	7.74	2.93	10.67	2.5
Community Aid	5.41	0.10	5.51	1.2
Total	317.95	121.38	434.34	100%

Note: Some numbers may not add due to rounding.

Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 2000, appendix. State outlay calculated based on largely unpublished data from Congressional Research Service publications.

Roughly half of total welfare spending goes to families with children, most of which are single parent households. The other half goes largely to the elderly and to disabled adults.

The Growth of Welfare Spending

As Chart 2 shows, throughout most of U.S. history welfare spending remained low. In 1965 when Lyndon Johnson launched the war on poverty, aggregate welfare spending was only $8.9 billion. (This would amount to around $42 billion if adjusted for inflation into today's dollars.)

Since the beginning of the war on poverty in 1965 welfare spending has exploded. The rapid growth in welfare costs has continued to the present.

In constant dollars, welfare spending has risen every year but four since the beginning of the War on Poverty in 1965;

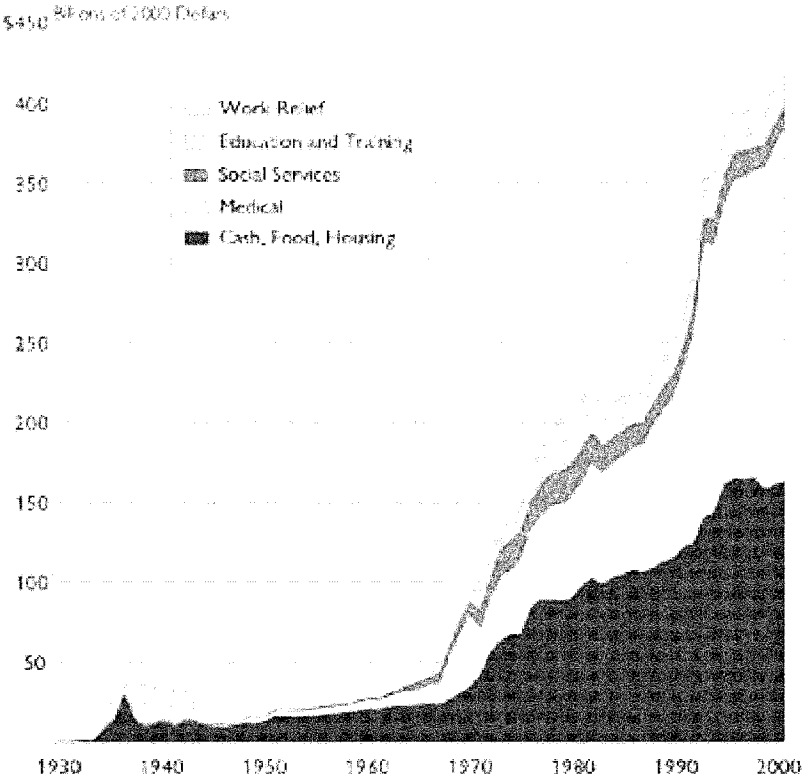
As a nation, we now spend ten times as much on welfare, after adjusting for inflation, as was spent when Lyndon Johnson launched the war on poverty. We spend twice as much as when Ronald Reagan was first elected.

Cash, food, housing, and energy aid alone are nearly seven times greater today than in 1965, after adjusting for inflation;

As a percentage of Gross Domestic Product, welfare spending has grown from 1.2 percent in 1965 to 4.4 percent today.

Chart 2 The Heritage Foundation

Federal, State, and Local Welfare Spending: 1929–2000



Sources: Robert Rector and William F. Lauber, *America's Failed $5.4 Trillion War on Poverty*, 1995; military and spending figures from the Office of Management and Budget, *Budget of the United States Government, Appendix*, various years.

Some might think that this spending growth merely reflects an increase in the U.S. population. But, adjusting for inflation, welfare spending per person is now at the highest level in U.S. history. In constant dollars, it is seven times higher than at the start of the war on poverty in the 1960's.

Total Cost of the war on poverty

The financial cost of the war on poverty has been enormous. Between 1965 and 2000 welfare spending cost taxpayers $8.29 trillion (in constant 2000 dollars). By contrast, the cost to the United States of fighting World War II was $3.3 trillion (expressed in 2000 dollars). Thus, the cost of the war on poverty has been more than twice the price tag for defeating Germany and Japan in World War II, after adjusting for inflation.

Welfare Spending in the Nineties

Welfare spending has continued its rapid growth during the last decade. In nominal dollars (unadjusted for inflation), combined Federal and state welfare spending doubled over the last 10 years. It rose from $215 billion in 1990 to $434 billion in 2000. The average rate of increase was 7.5% per year. Part of this spending increase

was due to inflation. But, even after adjusting for inflation, total welfare spending grew by 61 percent over the decade.

As Chart 2 shows medical spending (mainly in the Medicaid program) grew most rapidly during the 1990's, but welfare cash, food, and housing spending grew as well. Adjusting for inflation, cash, food and housing assistance is 37 percent higher today than in 1990. However, the growth in these programs has slowed since 1995, increasing no faster than the rate of inflation. This recent slowdown in spending is, in part, the effect of welfare reforms enacted in mid-nineties.

Future Welfare Spending Growth

President George W. Bush's recent budget blueprint does not contain sufficient detail to permit projections of welfare spending program by program.[3] However, the budget blueprint does provide spending projections for two major budget functions which are integral to the welfare system. These budget codes are Income Security (Function Code 600) and Health (Function Code 500). Income Security contains cash welfare, food stamps and other food aid, and housing aid.[4] Health (Code 500) contains Medicaid and a few smaller means tested health programs. Between them, these two budget categories contain about 90 percent of the Federal welfare system as it is described in this testimony. (Note: neither category includes Social Security or Medicare.)

President Bush's budget plan allows for spending in Income Security and Health to grow as rapidly or more rapidly than did former President Clinton's FY 20001 budget request. Income Security (Code 600) is scheduled to grow by 24 percent over the next 5 years. Health (Code 500) is scheduled to grow by 62 percent over 5 years.[5]

Based on these figures it seems certain that means tested welfare spending will grow as rapidly under President Bush's first budget request as under Clinton's last. Projected welfare spending figures from Clinton's last budget (FY2001) are provided in Appendix A.[6] These figures show a rapid of growth in welfare spending. (See Chart 3.)[7]

- Total Federal welfare spending is projected to grow from $315 billion in 2000 to $412 billion in 2005: an increase of 31 percent. The annual rate of spending increase is projected at 5.5 percent.
- Federal spending on cash, food, and housing aid is projected to grow from $141 billion to $174 billion: an increase of 23 percent. The annual rate of spending increase would be 4.3 percent, nearly twice the anticipated rate of inflation.
- Together, Federal and state welfare spending would rise from around $434 billion in 2000 to $573 billion in 2005.

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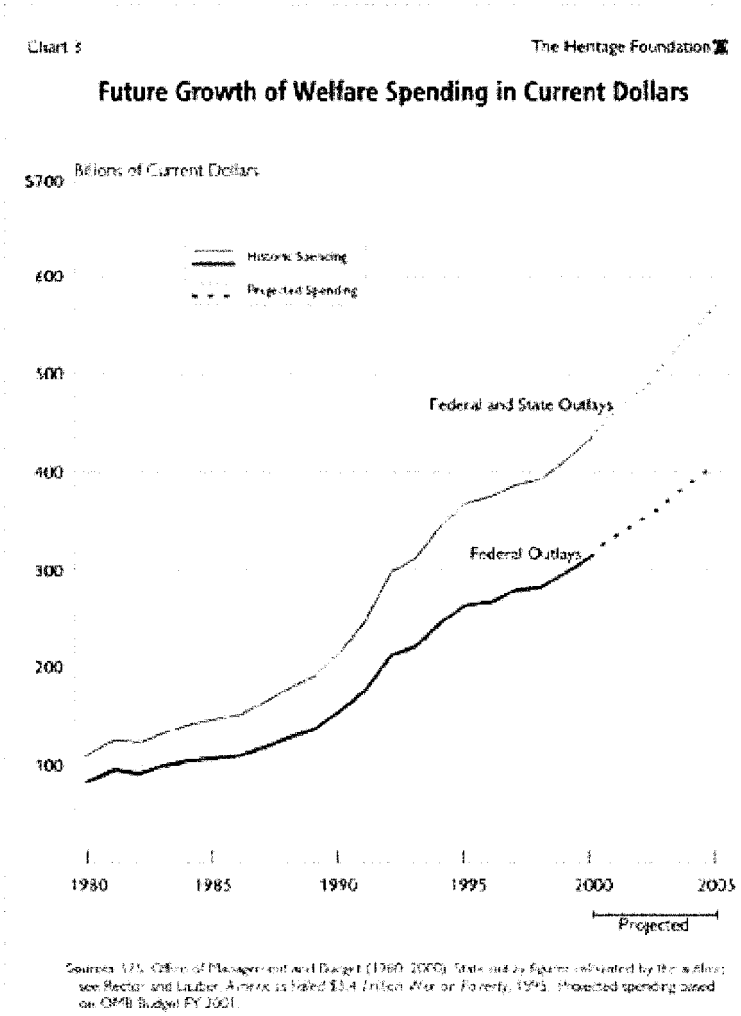
[3] The White House, *A Blueprint for New Beginnings: A Responsible Budget for America's Priorities,* (Washington, D.C.: U.S. Government Printing Office, 2001)

[4] Income Security (function code 600) contains some non-welfare expenditures, specifically outlays for retired Federal employees and other retirement spending. However, the rate of growth of this retirement spending changes little from 1 year to the next, therefore once the Code 600 outlay totals are known one can predict the means-tested component with reasonable accuracy.

[5] The White House, p. 196.

[6] Projected outlay figures taken from Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2001,* (Washington, D.C.: U.S. Government Printing Office, 2000). Table 32–2, pp.352–364.

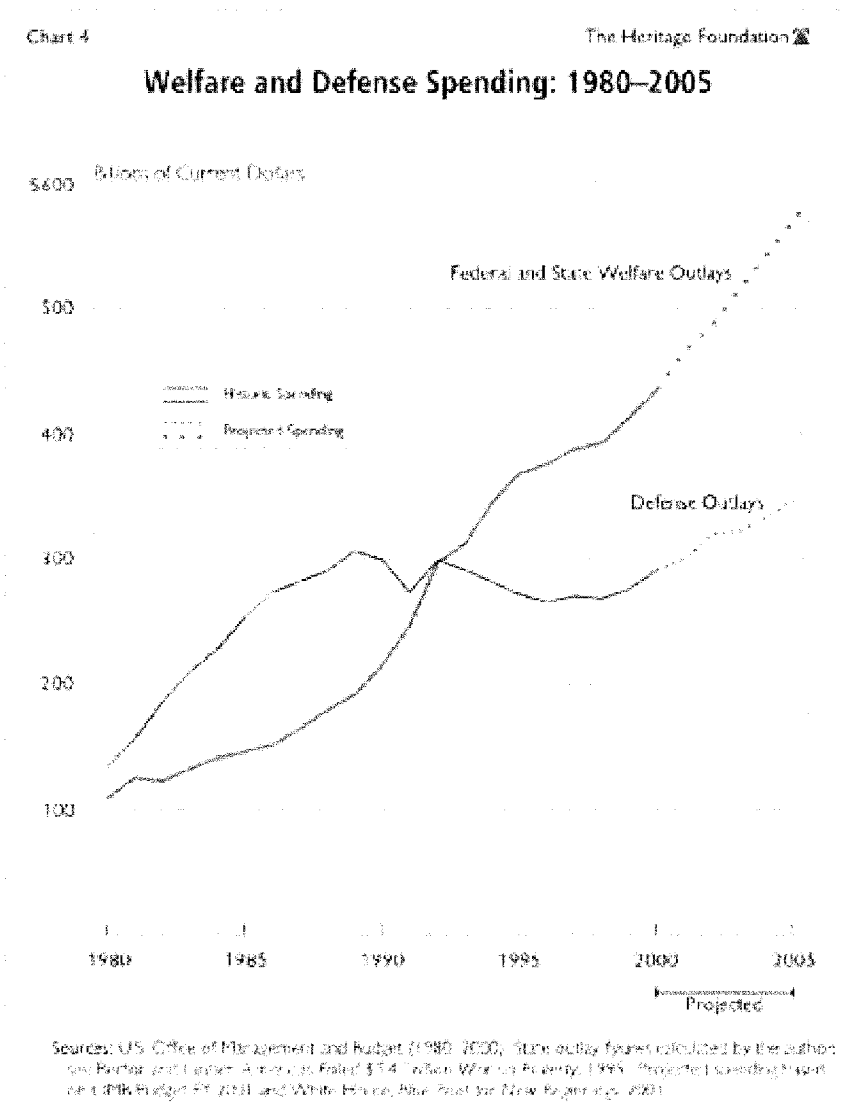
[7] The outlay figures in Appendix A are less detailed than the past spending figures used in Table 1. This accounts for small discrepancies between the FY2000 figures in Table 1and Appendix A. These minor differences do not appreciably affect the overall analysis.



Again, although we do not yet have program by program spending projections from the Bush administration, the broad budget function figures we do have allow for the same rate of growth in cash, food, and housing as Clinton's plan. Moreover, the Bush figures would permit more rapid growth in health spending. Thus, clearly, President Bush's plan does not require cuts in welfare spending or even a slowdown in the rate of spending growth.

Welfare and Defense

The rapid projected rate of growth of future welfare spending can be illustrated by comparing welfare to defense. The President has promised to make defense spending a priority. Under his budget plan, nominal defense outlays would increase for the first time in a half decade. Defense spending would rise by 17 percent over 5 years from $299 billion in FY2000 to $347 billion in FY2005. During the same period, however, welfare spending is scheduled to rise by 31 percent. As Chart 4 shows, the gap between welfare and defense spending will actually broaden during this period.



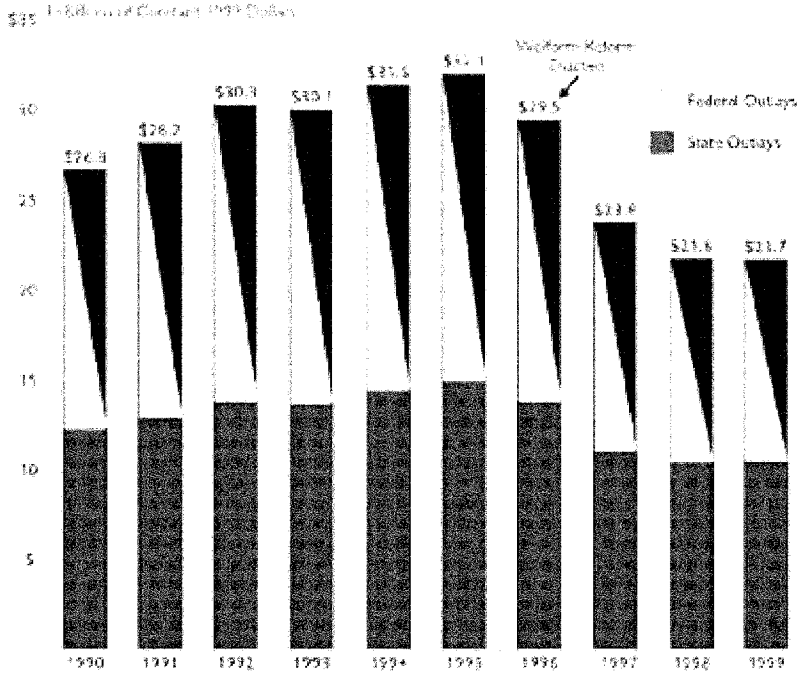
The Effects of Welfare Reform

In 1996, Congress enacted a limited welfare reform; The Aid to Families with Dependent Children (AFDC) program was replaced by the Temporary Assistance to Needy Families (TANF) program. Critically, a certain portion of AFDC/TANF recipients were required to engage in job search, on the job training, community service work, or other constructive behaviors as a condition for receiving aid. The effects of this reform have been dramatic.

- AFDC/TANF caseloads have been cut nearly in half.
- TANF outlays have fallen substantially. (See chart 5.)
- The decline in the TANF caseload has led to a concomitant decline in
- Food Stamp enrollments and spending.

Chart 5 The Heritage Foundation

How Welfare Reform Reduced Expenditure: AFDC and TANF Expenditures



Note: *Aid to Families with Dependent Children (AFDC) was replaced by the new Temporary Assistance to Needy Families (TANF) program in 1997.

Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 2001, appendix. State outlay estimates are highly rounded and taken from Congressional Research Service publications.

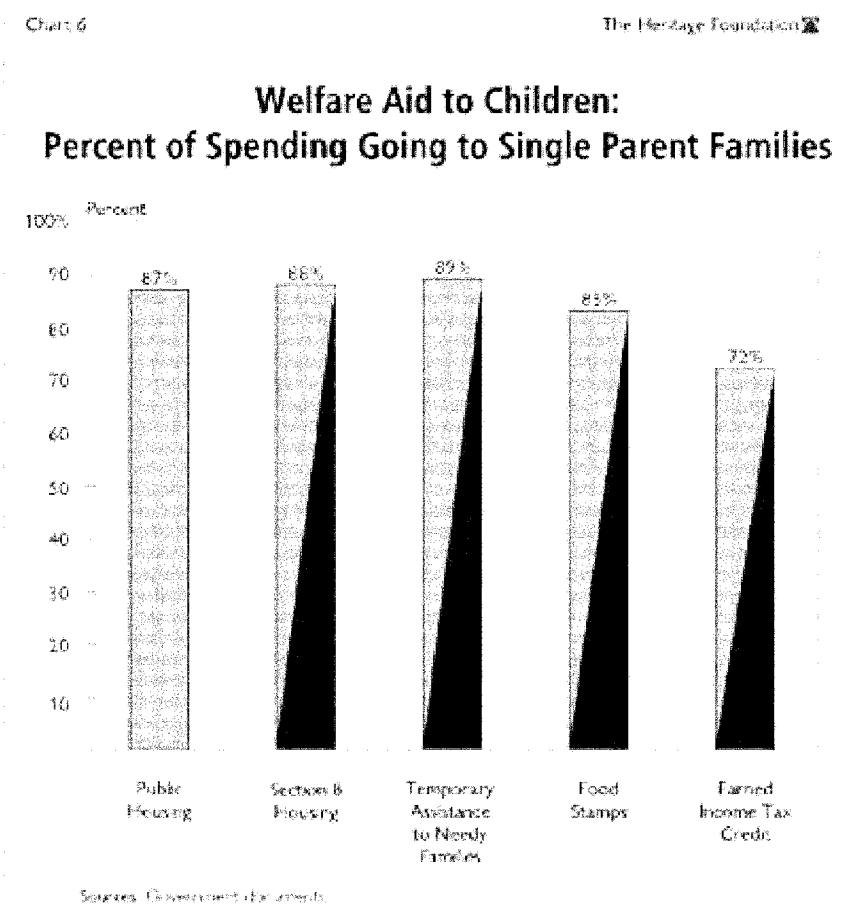
While critics predicted the reform would increase child poverty, the exact opposite has occurred. Once mothers were required to work or undertake constructive activities as a condition of receiving aid they left welfare rapidly. Employment of single mothers increased substantially and the child poverty rate fell sharply from 20.8 percent in 1995 to 16.3 percent in 2000. The black child poverty rate and the poverty rate for children living with single mothers are both at the lowest points in U.S. history.

In the welfare reform 1996 all sides came out as winners: taxpayers, society and children. By requiring welfare mothers to work as a condition of receiving aid, welfare costs and dependence were reduced. Employment increased and poverty fell. Moreover, research shows that prolonged welfare dependence itself is harmful to children; reducing welfare use and having working adults in the home to serve as role models for children will improve those children's prospects for success later in life.

The workfare principles of the 1996 reform should be intensified and expanded. Work requirements in TANF should be strengthened. Similar work requirements should be established in the Food Stamp and public housing programs. Finally, because the reform has clearly succeeded in cutting welfare use, TANF outlays should be reduced by 10 percent in future years.

Welfare Spending and the Collapse of Marriage

As noted previously, about half of all means tested welfare spending is devoted to families with children. Of this spending on children, nearly all goes to single-parent families. Chart 6 shows the percent of aid to children in major welfare programs which flows to single-parent families. The single parent share is generally well above 80 percent.



Clearly, the modern welfare state, as it relates to children is largely a support system for single parenthood. Indeed, without the collapse of marriage which began in the mid-1960's, the part of the welfare state serving children would be almost non-existent.

The growth of single-parent families, fostered by welfare, has had a devastating effect on our society. Today nearly one third of all American children are born outside marriage. That's one out-of-wedlock birth every 35 seconds. Of those born inside marriage, a great many will experience their parents' divorce before they reach age 18. Over half of children will spend all or part of their childhood in never-formed or broken families.

This collapse of marriage is the principal cause of child poverty and a host of other social ills. A child raised by a never-married mother is seven times more likely to live in poverty than a child raised by his biological parents in an intact marriage. Overall, some 80 percent of child poverty in the U.S. occurs to children from broken or never-formed families. In addition, children in these families are more likely to become involved in crime, to have emotional and behavioral problems, to be physically abused, to fail in school, to abuse drugs, and to end up on welfare as adults.

Since the collapse of marriage is the predominant cause of child-related welfare spending, it follows that it will be very difficult to shrink the future welfare state unless marriage is revitalized. Policies to reduce illegitimacy, reduce divorce and expand and strengthen marriage will prove to be by far the most effective means to:

- reduce dependence;
- cut future welfare costs;
- eradicate child poverty; and,
- improve child well-being.

Tragically, current government policy deliberately ignores or neglects marriage. For every $1,000 which government currently spends subsidizing single parents, only one dollar is spent attempting to reduce illegitimacy and strengthen marriage.

Fortunately, President's Bush's budget plan does propose a new program to "promote responsible fatherhood." This proposed program could become the seedbed for a broad array of new initiatives to strengthen marriage. Still, the money requested is pitifully small: only $64 million per year. This amounts to roughly one penny for each one hundred dollars in projected welfare spending. The budget allocation to the new fatherhood program in FY 2002 should be increased fivefold with the funds diverted from TANF outlays. Beyond FY 2000 some 5 to 10 percent of Federal TANF funding should be devoted to pro-marriage activities.

Conclusion

When Lyndon Johnson launched the war on poverty he did not envision an endless growth of welfare spending and dependence. If Johnson returned today to see the size of the current welfare state he would be deeply shocked.

President Johnson's focus was on giving the poor a "hand up" not a "handout." In his first speech announcing the war on poverty, Johnson stated, "the war on poverty is not a struggle simply to support people, to make them dependent on the generosity of others." Instead, the plan was to give the poor the behavioral skills and values necessary to escape from both poverty and dependence. Johnson sought to address the "the causes, not just the consequences of poverty."

Today, President Johnson's original vision has been all but abandoned. We now have a clear expectation that the number of persons receiving welfare aid should be enlarged each year, and that the benefits they receive should be expanded. This expectation is clearly reflected in the future spending projections in Appendix A. Any failure to increase the numbers of individuals dependent on government and the benefits they get is regarded as mean spirited.

Yet the expansion of the conventional welfare system is destructive. More than twenty years ago, then President Jimmy Carter stated, "the welfare system is anti-work, anti-family, inequitable in its treatment of the poor and wasteful of the taxpayers' dollars." President Carter was correct, yet today little has changed except that the welfare system has become vastly larger and more expensive.

This expansion of welfare spending has harmed rather than helped the poor. Instead of serving as a short-term ladder to help individuals climb out of the culture of poverty, welfare has broadened and deepened the culture of self-destruction and trapped untold millions in it.

Rather than increasing conventional welfare spending year after year, we should change the foundations of the welfare system. Policy makers should embrace three basic goals.

1. We should seek to limit the future growth of aggregate means-tested welfare spending to the rate of inflation or slower.

2. We should require welfare recipients to perform community service work as a condition of receiving aid along the lines of the TANF program operating in Wisconsin.

3. We should support programs which foster and sustain marriage rather than subsidizing single parenthood. In addition, we should reduce the anti-marriage penalties implicit in the welfare system.

These three goals are synergistic. They will operate in harmony and reinforce each other. In the long run, it will be difficult to control welfare spending merely by cutting funding. Rather, if we change the behaviors of potential recipients we will reduce the need for future aid. As the need for aid diminishes, spending growth will slow and then decline, and the well-being of the poor and society as a whole will rise.

Mr. RYAN. So the growth of spending is increasing.

Could we do better in social service block grants? Absolutely.

But the point is, this bill is really about the big guy versus the little guy. Many Catholic charities, many religious charities already get Federal funds. You see tenets, such as in Catholic hospitals, whereby their religious beliefs are practiced in their hospitals, and yet they still get Medicaid and Medicare dollars.

You have this going on all of the time. They have the 1964 exemption for the hiring discrimination point.

So what happens about getting into the inner city, getting into the rural areas? What about the little guy, such as the Baptist churches in Racine, Wisconsin, who have some ideas, who have relationships, who know the problems and know the people and how to help them?

Giving them the ability to compete for these funds fairly is what this is all about. It is not bringing new discrimination into the land. It is simply evening that playingfield and removing some of the barriers, some of the obstacles that exist in Federal statutes today, where they exist, because a lot of these barriers have already been removed.

The charitable choice law on the books right now is an excellent example. Do you see widespread discrimination? I don't think so.

I think what you look at here is the big churches, the big religious organizations, they can get around this. They can form that (c)(3) organization, they can pay for the lawyers, they can pay for the regulators to fix their statutes, fix their books, and get them going.

But what about the little guy, the small religious institution, who is in the middle of the battle on the war on poverty, who is already putting together an army of fighting these kinds of problems in our inner cities, in our rural areas? That is kind of what this is all about.

And when you take a look at it, at the end of the day, I think you are going to see more attention paid to our social pathologies. I think you are going to see that—you are going to match the religious expenditures of people donating their time and money with what we are doing at the Federal, State, and local government, and you are going to see an accumulation of more dollars, more people, and more resources dedicated to fighting the poverty and problems that are facing us in our inner cities.

So to think that this is going to take away from those efforts, I think that just misses the point. I think it quite the opposite.

Mr. NADLER. Mr. Ryan.

Mr. RYAN. Please.

Mr. NADLER. Mr. Ryan, a couple points.

Number one, the little church in Racine, Wisconsin, is perfectly allowed under current law to compete for Federal grants. Having to form a 501(c)(3), I agree, could be a barrier. Even though it is not very difficult to do.

And if you wanted to say that we ought to have some ability to help that church to do that, that makes sense, as far as I am concerned.

However, Title VII enables the church to discriminate for the church's purposes. But, they cannot today, on the basis of religion, discriminate in who ladles out the soup, if they receive Federal

funds, nor should they be able to, as they would be able to under this bill.

So that is a very new provision, which expands it to the direct provision of social services.

The other point you make is with regards to the availability of funds. The only point that this bill has with the respect to the availability of funds is the guarantee that, in every single case, there should be an alternative secular provider of services, which will necessitate, assuming you are going to have a dual system everywhere, a vast amount of new money. And if you want to fund that, it is going to require a lot of new money.

And the final point is the nub of this bill which was, to me, the astonishing statement—or admission, perhaps—by Mr. Watts that, yes, a drug rehab methodology that uses religious doctrine, paid for by Federal funds in its activity, is constitutional.

It has always been clear is that the government cannot directly pay for religious activity. And if the religious activity is saying, "You should get off drugs because God wants you to," "because Jesus wants you to," "because the Devil wants you to"—and this is the Wiccan church—for whoever it is, that clearly is not a proper use of Federal funds.

They can do it on their own funds. And you want to have a 501(c)(3) to separate the two and protect the church, as I said before.

Chairman HERGER. The gentleman's time has expired.

Mr. NADLER. Thank you, Mr. Chairman.

Chairman HERGER. Thank you. The gentleman from Texas, Mr. Doggett, to inquire.

Mr. DOGGETT. Thank you very much, Mr. Chairman.

Mr. Watts, I gather from the comments you made to Mr. McNulty's question earlier that you are working with the Committees, that while you may not know the specific offset, you certainly feel like any tax loss from this bill should be offset, so that we are not in a position of raiding Social Security or Medicare?

Mr. WATTS. You bet.

Mr. DOGGETT. Thank you.

Mr. Nadler, I have a query for you because of where you are sitting, because it seems to me it was just a few weeks ago that we had Treasury Secretary O'Neill here to testify about the relationship of tax policy and charitable donations. And I note—and I think it is noteworthy—that there is no one from the administration here today to testify in support of this proposal.

Secretary O'Neill testified to the effect that the tremendous loss that some charitable institutions and religious institutions felt they would suffer as a result of what was presented as a repeal of the estate tax—and you know that it of course didn't turn out to be, really, a repeal of the estate tax; just a postponement of it—that there would not be any damage to charitable institutions because tax policy has no significant impact. It is a person's faith and their interest in doing good and not tax policy that causes them to make these contributions, according to Secretary O'Neill.

And my question to you, Mr. Nadler, is whether or not you believe it would be placing themselves in this total contradiction of having said tax policy wasn't important to charitable contributions

and now apparently claiming that it is, whether it is that contradiction that causes them not to come today? Or is it the same lack of priority for this proposal that caused them to totally exclude it from the big tax bill that they just had and to place it very much in second place or third or fourth or tenth or twelfth, as the case may be, to not include anything about this issue in their tax package?

Which of the two do you think is most likely to explain their failure to come and support this proposal today?

Mr. NADLER. What you are asking me, is if the administration being neglectful of its own priority legislation or does it have an ulterior motive, and I do not know the answer to that specific question.

I can say this: Two things are obvious. One, as Mr. Hall said, many people are motivated in charitable contributions and charitable endeavors and good works by their religious faith, by the consciences, and many church activities are so motivated. That is obvious.

It is also obvious that many charitable contributions are motivated by tax considerations. That is why we have half of our Tax Code. A lot of our tax provisions, tax incentives, are specifically incentives to get someone to do something: build a low-income housing project; do research in medicine; give a charitable contribution that we view as socially useful and productive, improving the state of life in the country.

And there is a whole estate planning bar that exists just to promote how you can use charitable contributions and other provisions of the Tax Code to lessen the tax bite on your income or on your estate.

It is obvious that repealing the estate tax will cause a diminution in charitable contributions. Perhaps not by the low-income person, maybe not the middle-income person, but certainly by the wealthy people who are engaging in tax planning.

Mr. DOGGETT. Mr. Scott, you have already referenced the problems that could develop by some religious group that viewed racism as a part of their religion with reference to discrimination in employment. I want to ask you about another discrimination issue in this that has not been discussed so far.

There are a variety of groups across the county, some considered more mainstream than others, but certainly with very strong adherents who have great faith in their point of view, the Branch Davidians, the Church of Scientology, Reverend Farrakhan's group. We have a group there in Texas called the Wiccans that have formed kind of a religion around witchcraft.

What is there in this legislation that will permit and justify the government discriminating among religious groups as it decides to provide them more dollars to proselytize in their faith at the time that they deliver social services?

Mr. SCOTT. There is a provision in the bill that provides for a right of action by groups. It is a little unclear; I read it to say that if your group didn't get picked, you have a right of action against the county to say that you were discriminated against because of your religion. So if any of these groups that you mentioned didn't

get the contract, they would have a right of action to sue to show that their religious beliefs caused them not to get the contract.

Once they get the contract, they are free to exercise their religious beliefs.

You know, this whole thing about discrimination, I think there is a fundamental question that we have to answer, and that is: If you are a drug counselor certified by the State, do you have an absolute right to apply to the county drug program without regard of your religion or not?

We have heard Planned Parenthood, where you ask the question, what is wrong with hiring your own? I thought we had settled that when President Roosevelt signed the executive order in the forties and when we passed the sixties Civil Rights Acts. I thought we had answered the question. But apparently not. And apparently it ought not be a protected class.

Maybe we ought to discuss whether you ought to go back to where you could hire anybody you want and discriminate against them based on religious——

Chairman HERGER. The gentleman's time has expired.

Mr. DOGGETT. Thank you.

Chairman HERGER. Thank you very much. The gentleman from Louisiana to inquire. Mr. Jefferson.

Mr. JEFFERSON. Thank you, Mr. Chairman. I am not sure what I am going to inquire about anymore.

[Laughter.]

Mr. JEFFERSON. The most difficult subject always to discuss is religion, in whatever context you discuss it. And I am confounded about the whole subject, because it seems what you are doing with the bill is extending from the Temporary Assistance for Needy Families (TANF) rules now to some other Federal program, saying you can have charitable choice in other programs, it seems to me.

And, of course, what it does is create a bigger set of opportunities for these organizations to get involved in applying for Federal grants.

There is some notion here abounding that religious groups, for whatever reason, bring a special expertise or a special benefit to those people who need their services that the other organizations don't bring. And, therefore, we ought to be involved in this to make sure that this group of people can get this done, I suppose because of a spirit of volunteerism or zeal or benevolence or whatever; I don't know.

And it disregards the idea of whether people ought to have just basic qualifications to counsel people in drug situations or whatever the maladies might be that we are trying address.

And so I wonder about the whole premise of it, to start out with.

I think a church group is duty-bound to proselytize. I think people ought have to proselytize their faith. I think that is part of the exercise of one's faith, to try and explain to others why you believe as you do and to proselytize for converts. That is what happens here.

And if you say that is an essential part of the treatment regimen, but you can't do it under this bill, and that distinguishes it from these other secular groups, then you have to ask yourself, what's the point of it all?

So I am expressing my confusion about this legislation to you now because I believe that religious groups ought to get involved in social healing, and in helping the poor, as J.C. has said and other have said here. I am trying to figure, though, why we need to do something in this bill to make sure that that happens.

We are not setting up, are we—I don't see it here—any new pots of money which segregated for religious groups to apply for, that they wouldn't otherwise wouldn't be able to apply for?

That is not happening, is it?

Mr. HALL. No.

Mr. JEFFERSON. So they are going to apply for and compete with nonprofits of secular or other bents, right?

Mr. HALL. Right.

Mr. JEFFERSON. So I am trying to figure, what are we doing here, Tony? I can't really see—we are having a big discussion, taking up a lot of time, but I don't know what we are going to accomplish if we pass this that we can't already do.

And on the discrimination issue, all the civil rights law says is, look, we don't want to make it a civil rights cause of action, because a group doesn't have folks that have other religions other than the ones that make up a part of a church organization. Well, that is understandable.

But that is all it does. It doesn't get into these other issues.

And J.C. is talking discrimination from another point of view. He is saying that some groups out here can't get what other groups can get, therefore, it looks as if we are discriminating against them. Well, that is another whole set of issues.

But the bill doesn't seem to address that either. I don't see anything here that says, well—or even with the big ones and the little ones. I don't see anything that says you have to favor little groups over big ones.

So I don't know how we are addressing all these things we raised today, and wish somebody would help clear this thing up for me.

Mr. SCOTT. Mr. Jefferson, I think one of your problems in trying to figure this out is we haven't gotten a straight answer to the question, can you or can you not advance your religion during the government-funded program?

The gentleman from Michigan asked the question. And once you get an answer to that, then things start falling into place.

The present law, I agree with the gentleman from Wisconsin, you are not doing much change. I disagreed with the law in TANF. So did the Clinton administration. They ruled it was unconstitutional and it hadn't been implemented. So that is the position I am taking. We shouldn't expand it.

But you also mention the question of hospitals. That is a different situation, because in that situation the beneficiary decides to go to Mary Immaculate hospital rather than another hospital. The State doesn't designate a religious hospital as the State hospital. It doesn't designate Notre Dame or Catholic University as the State university. You can take your Pell grant to those colleges.

If we had a situation where we are funding this where the drug addict can choose which organization he is going to do, you have a different analysis. But here, government decides this religion gets

to advance its religion, and we are going to pay for it directly. That is a significant difference.

And as the gentleman from Louisiana said, there is no help for small organizations, religious or otherwise. They need the technical assistance on how to deal the a government grant. There is nothing in charitable choice that helps that.

Mr. WATTS. Mr. Chairman, can I respond as well?

Mr. JEFFERSON. Go ahead.

Chairman HERGER. The time of the gentleman has expired, but, yes, just briefly.

Mr. WATTS. I would work with my friend from Virginia to create vouchers, scholarship program, and I have no problem with letting the individual determine if they want to use the faith-based organization or the secular organization. That would not hurt my feelings at all.

But let me go more specifically to what Bill said, concerning being duty bound to proselytize and also the religious character of the organization.

I don't want to lead anybody astray; yes, I do want to protect the religious character of the organization, just like, you know, we, as I mention—and I just mention Planned Parenthood; we can point to many organizations—just like Planned Parenthood, their secular character or whatever character they lay out, nobody questions their character, the character of their program, to receive Federal dollars.

Now, am I saying we shouldn't question these things? I am not saying that. I am saying we will have a process in place, obviously, through Housing and Urban Development Department (HUD) or whatever organization to determine how these dollars are distributed.

Now, let me also address the duty bound question to proselytize. I don't think we are duty bound in our faith to proselytize. I think we are duty bound in our faith to love people, to help people, to feed the hungry, to help the homeless, to try and go in and take people who need help—I think our faith should bind us to the duty off helping and assisting and doing the things that I think we are called to do in this Nation.

As Americans, I think we have a moral obligation to help those that cannot help themselves. But I don't think that I am duty bound. I am a Baptist. I don't think that I am duty bound to try to make you a Baptist or to make someone a Catholic or Methodist or Jewish or whatever the denomination might be.

Chairman HERGER. I thank the gentleman and all of our colleagues for their testimony.

I would like to recognize the gentleman from Louisiana, Mr. McCrery, for a clarification.

Chairman MCCRERY. Mr. Scott, I just want to clarify your point about the Clinton Justice Department saying that the charitable choice provisions of TANF were unconstitutional.

I think you will find that they declared that with respect to the Community Services Block Grant charitable choice provisions and not TANF. And in fact, there are numerous examples of TANF funds being used under the charitable choice provisions of TANF.

Mr. SCOTT. Well, when the President signed all of those bills, he specifically raised questions about the wording of charitable choice and that they would be implemented in such a way—as we started out, you give a straight answer to the question, "Can you proselytize during the program?" and then you can have a discussion.

I don't believe that you should. Based on the language, it is obvious you are going to do. Then you get into the——

Chairman MCCRERY. Excuse me. But in the TANF charitable choice provision, of course, there is an opt-out for the participant, so——

Mr. SCOTT. OK, then fine. You will fund the pervasively sectarian organization. You will proselytize. You will convert people during the program with Federal money, so long as it is not unwanted proselytization.

My view is, you can't run a religious program and provide wanted proselytization. You can't do that either.

And if that is what you are paying for, if you are paying for religion as the methodology, if you just convert——

Chairman MCCRERY. We don't need to debate this. I just wanted to point out that what you said is inaccurate with respect to TANF. It is accurate with respect to Community Services Block Grant, but not with TANF. There are numerous programs under TANF where the funds are being spent by religious organizations under the exception that was provided in TANF. That is all I wanted to point out.

Mr. SCOTT. If I could present information——

Chairman MCCRERY. The constitutional question——

Mr. SCOTT. After the Committee——

Chairman MCCRERY. We are not going to solve here today. You will have to sue.

Mr. SCOTT. I would like to——

Chairman MCCRERY. Thank you, Mr. Chairman.

Mr. CARDIN. Mr. Chairman, just to clarify this with Mr. McCrery, my understanding, though, is, except for one example, none of the recipients of Federal funds under TANF have sought the protection of employment discrimination.

In the one case where they had employment discrimination, it is currently pending in the courts in Texas. I could be wrong on that, but I believe there has not been the use of the protection for employment discrimination.

Chairman HERGER. Again, I want to thank each of our panelists for outstanding testimony.

And with that, I am going to turn the gavel over to Chairman McCrery for the second panel. Thank you.

Chairman MCCRERY. [Presiding.] Thank you, Chairman Herger. I would like to call the next panel to the front.

Mr. Yopp, Mr. Reighard, Ms. Melendez, Mr. Boshara, Ms. Aviv, and Ms. Meiklejohn.

If I could ask members in the audience to please take a seat and cease their conversations, we can get started with the second panel.

This panel of witnesses was asked to testify today on the tax provisions in the legislation that we are considering, as well as tax provisions offered by the President in his budget.

And I would ask witnesses to try to make their remarks with respect to those provisions, and not belabor the things that we have been going on for the last two and a-half hours.

[Laughter.]

Chairman MCCRERY. However, I know that some of you are anxious to talk about those things, and you are here anyway, so go ahead. You only have 5 minutes.

But, I would ask the members of the Subcommittee to please restrict their questions to matters of jurisdiction within the Select Revenue Measures Subcommittee; that is, the tax measures. That is what this panel is designed to flesh out and explore.

Having said that, now I will welcome all of our panelists, particularly I want to welcome Mr. Yopp, who is from my hometown of Shreveport, Louisiana. He is a businessman in Shreveport. But on the side, he works with the Shriners organization and has been the chairman of the board of Governors for the Shreveport Shriners Hospital for Children.

Back in 1922, the Shriners established their very first hospital for children in the United States, and they established it in Shreveport, Louisiana. So we have a long history in north Louisiana of recognizing the value of charitable organizations. And certainly, the Shriners have been a shining example of the good things we do in this country for those who are less fortunate than ourselves.

And with that, I want to turn it over to Mr. Lewis, who also has a witness that he would like to introduce.

Mr. LEWIS. Thank you, Mr. Chairman.

I am pleased that Bill Reighard, president of the Food Donation Connection (FDC), is today to testify.

Bill and his organization work with Tricon Global Restaurants, the parent company of Kentucky Fried Chicken, Pizza Hut, and Taco Bell.

Tricon, which is headquartered in Kentucky, operates one, if not the largest, prepared food donation program in America, and Food Donation Connection is their primary partner.

Bill's organization assists restaurants like Kentucky Fried Chicken (KFC) and Pizza Hut by linking them to food programs and agencies that help the hungry. Overall, FDC manages the food donations of over 4,500 restaurants, matching them with over 1,500 hunger agencies.

Bill has 26 years of experience with the food service industry and working with the needy. He is here today to discuss the hunger relief provisions in H.R. 7.

And I am very interested in hearing what you have to say, Bill. Thanks for coming.

Chairman MCCRERY. Thank you, Mr. Lewis.

We also have on the panel today Dr. Sara Melendez, president and chief executive officer of Independent Sector; Ray Boshara, policy director, Corp. for Enterprise Development; Diana Aviv, vice president for public policy, United Jewish Communities; and Nanine Meiklejohn, with the American Federation of State, County and Municipal Employees.

Welcome, everybody. We will begin with the Shreveporter, Mr. Yopp.

And your written testimony, by the way, will be included in the record, without objection. And we ask you to summarize that in 5 minutes. Thank you.

STATEMENT OF TROY BRYANT YOPP, JR., FORMER CHAIRMAN OF THE BOARD OF GOVERNORS, SHREVEPORT HOSPITAL OF SHRINERS HOSPITALS FOR CHILDREN, SHREVEPORT, LOUISIANA, ON BEHALF OF SHRINERS HOSPITALS FOR CHILDREN, TAMPA, FLORIDA

Mr. YOPP. Thank you, Mr. Chairman. Having been fully introduced, I will skip my introduction and go right to the chase.

Shriners Hospitals for Children is the largest charity hospital system in the United States. Our first hospital, as you stated, was built in Shreveport, Louisiana, our hometown. Today the 22 Shriners hospitals provide excellent medical care to children without regard to race, religion, or relationship to a Shriner. In fact, several members of this Subcommittee have Shriners hospitals in their States, and we serve children in all 50 States.

All care at Shriners hospitals is provided totally without charge. We have treated hundreds of thousands of children free of charge, accepting no government funds and no insurance, nor parental reimbursement for the care provided.

We have provided care to over 625,000 kids since 1922. We are very proud of this achievement.

It would not have been possible without the many charitable contributions we have been so fortunate to receive over the years. Voluntary private philanthropy enables us to continue this record of service.

It is for this reason that I am here today before you to encourage Congress to enact legislation that would make it possible for donors to contribute funds from their IRAs without tax penalty to Shriners hospitals.

Any development officer at a hospital, university, or church will tell you that life-income gifts are an extremely important part of philanthropy. Life-income gifts allow the donor to have his cake and eat it too.

The donor retains an income interest while giving capital to a qualified 501(c)(3) organization. The charitable remainder trust, pooled income fund, and charitable gift annuity are called life-income gifts because they combine a retained income stream with a gift of capital or remainder to charity. These well-established gift formats have been used for over three decades.

Individual retirement accounts are a great potential source of support for charities. According to the Joint Committee on Taxation, it is estimated that there are more than $1 trillion in IRA accounts.

Although incomes and wealth have increased sharply over the past decade, charitable giving has not kept pace. The rate of growth, 3.2 percent in charitable giving in 2000, was the lowest in the past 5 years.

Tax incentives encourage contributions to IRAs. However, tax penalties discourage contributions from IRAs to charities, even though many persons, including thousands of self-employed profes-

sionals, have IRA assets well in excess of what is needed for a secure retirement.

I would like to explain what these penalties are and how they can be removed.

The taxpayer may withdraw funds from an IRA after age 59 and a-half but most commence withdrawal when he or she attains 70 and a-half. Under the current law, an IRA withdrawal is taxable as ordinary income, even if the funds are used to make a charitable contribution. We have found this to be quite discouraging to individuals who want to make a gift of IRA assets to Shriners hospitals.

Under the best of circumstances, the tax may be offset by a charitable donation. The net results can be a tax liability, even though a charitable contribution is made. This is a serious obstacle to even the most generous potential donor.

The legislation we support would remove those obstacles. The legislation would enable the donor, commencing at age 59 and a-half, without penalty, to roll over IRA assets, either as an outright gift or to a qualified life-income vehicle.

If the donor has saved in an IRA more than what is needed for secure retirement, he or she would have the opportunity, without incurring a tax penalty, to make a charitable contribution from IRA assets. If this option were available, we believe many persons would take advantage of this opportunity instead of deferring IRA withdrawals until age 70 and a-half and then taking out only the annual minimum required by law. This is what many upper-income taxpayers now do.

Permitting tax-free rollovers, commencing at age 59 and a-half, to life-income charitable gifts will encourage earlier distributions, which also means earlier taxation.

The best way to encourage charitable giving is to provide individuals with as many options as possible. Direct gifts to charity are an appealing option, but indirect giving through income gifts is equally if not more so. This is because life-income gifts more explicitly accommodate charitable giving with the need to ensure an income stream for life to the donor.

They let the donor have the joy of giving to one's favorite charity in a way that gifts at death cannot.

Permitting tax-free rollovers to life-income gifts provides taxpayers will a well-regulated option that reconciles retirement security with charitable giving. We believe that the proposed legislation will provide much needed support for major gifts to charities at a modest cost to the Treasury.

In actuality, there likely would be no cost. The enhanced ability of charities funded by IRA rollover gifts will relieve the Federal government of expenditures which overwise would be needed to provide health care and similar service.

The present opportunity is truly a win-win situation for charities, the Treasury, and the American people. This is why we so strongly support this legislation.

[The prepared statement of Mr. Yopp follows:]

Statement of Troy Bryant Yopp, Jr., Former Chairman of the Board of Governors, Shreveport Hospital of Shriners Hospitals for Children, Shreveport, Louisiana, on behalf of Shriners Hospitals for Children, Tampa, Florida

Good morning. Thank you for the opportunity to be here today.

My name is Troy Bryant Yopp, Jr. I'm the former Chairman of the Board of Governors of the Shreveport Hospital of Shriners Hospitals for Children. It is a privilege and an honor to appear before you today on behalf of Shriners Hospitals for Children.

Shriners Hospitals for Children is the largest charity hospital system in the United States and one of the largest charities in the United States. Our first hospital was opened in 1922 in our hometown, Mr. Chairman, of Shreveport, Louisiana. Today, the twenty-two (22) Shriners hospitals provide excellent medical care to children without regard to race, religion, or relationship to a Shriner. All care at Shriners Hospitals is provided totally without charge. Shriners Hospitals have treated hundreds of thousands of children free of charge, accepting no government funds, and no insurance nor parental reimbursement for the care provided.

Combining quality medical care, progressive research and innovative teaching programs, Shriners Hospitals are at the forefront of orthopaedic and burn care. Since 1922, Shriners Hospitals have provided care to over 625,000 children.

We're very proud of this achievement. It would not have been possible without the many charitable contributions we have been so fortunate to receive over the years. Voluntary private philanthropy enables us to continue this record of service. It is for this reason that I am here before you today to encourage Congress to enact legislation that would make it possible for donors to contribute funds from their IRAs without tax penalty to Shriners Hospitals.

Any development officer at a hospital, university, or church will tell you that life-income gifts are an extremely important part of philanthropy. Life-income gifts make major gifts possible because these kinds of gifts allow the donor to "have his cake and eat it, too." The donor retains an income interest while giving capital to a qualified Internal Revenue Code § 501(c)(3) organization.

I'd like to take a few minutes to give you an overview of how life-income gifts work.

The charitable remainder trust ("CRT"), pooled income fund ("PIF"), and charitable gift annuity ("CGA") are called "life-income" or "split interest" gifts because they combine a retained income stream with a gift of capital or "remainder" to charity.

The CRT was authorized by the Tax Reform Act of 1969. It is governed by Internal Revenue Code § 664 and well-established Treasury Regulations. These trusts for over three decades have been widely used to provide secure retirement incomes for many thousands of philanthropically minded taxpayers. The donor can be the trustee of the CRT as well as the income beneficiary.

A CRT can be either a charitable remainder annuity trust ("CRAT") or charitable remainder unitrust (CRUT). As the name implies, the CRAT pays the donor (or the donor and spouse) an annuity. The donor establishes both the amount and frequency of payments, in accordance with Treasury regulations. If net income is insufficient to pay the predetermined amount, the trustee will invade corpus to make up any shortfall. Only after the expiration of the life income interest are the assets in the trust disbursed to the charity selected by the donor.

The CRUT operates in the same manner as the CRAT, with one important difference: when the donor creates a CRUT, he or she sets a pay-out rate which is a fraction of the annual value of the trust assets. The pay-out will vary depending on the value of the assets (determined annually). This makes the CRUT a hedge against inflation. There are several planning options unique to the CRUT. For example, the donor may direct that principal is to be invaded to make up any deficiency in income or may elect an "income only with make up" format. As with the CRAT, only upon the expiration of the beneficiary's (or beneficiaries') interest will the remaining assets be distributed to the charity selected by the donor.

The pooled income fund is authorized by Internal Revenue Code § 442. It functions as a "common fund" CRT. It is administered by the charity (or its designee, usually a bank). The donor contributes money or qualified securities to the PIF, which pays the donor (and his or her spouse) income which depends on the ratio of contribution to the total of assets in the fund and its investment performance. As the term "pooled" implies, many donors contribute to one PIF, which pays to each a secure income. An advantage of the PIF is diversification combined with professional asset management. Our pooled income fund pays approximately 6.46%.

The charitable gift annuity is not a trust. It is a contract between the charity and donor. In return for a contribution (which exceeds the cost of a comparable commercial annuity), the charity promises to pay an annuity at a preset rate. The gift element consists of an amount which is actuarially determined to be in excess of what is needed to fund the payments to the donor. Joint and survivor (husband and wife) charitable gift annuities are often used in retirement income planning. Virtually every major charity in the United States issues charitable gift annuities.

Individual Retirement Accounts are a great potential source of support for charities. According to the Joint Committee on Taxation, it is estimated there are more than $1 trillion in IRA accounts.

Although incomes and wealth have increased sharply over the past decade, charitable giving has not kept pace. The rate of growth (3.2%) in charitable giving in 2000 was the lowest in the past five years, according to Giving USA, which is published by the American Association of Fund Raising Counsel.

Tax incentives encourage contributions to IRAs. However, tax disincentives discourage contributions from IRAs to charities, even though many persons, including thousands of self-employed professionals, have IRA assets well in excess of what is needed for a secure retirement.

I'd like to explain what these disincentives are and how they can be removed.

The taxpayer may withdraw funds from an IRA without penalty after age 59½, but must commence withdrawal in the April following the year in which he or she attains age 70½.

Under current law, an IRA withdrawal is taxable as ordinary income—even if the funds are used to make a charitable contribution. We have found this to be quite discouraging to individuals who want to make a gift of IRA assets to Shriners Hospitals. Under the best of circumstances, the tax may be offset by the charitable deduction, but not always—because of "percentage limits" and "itemized deductions reduction".

For donations of cash or "ordinary income property", the charitable contribution deduction may not exceed 50% of an individual's adjusted gross income ("AGI"). To the extent a taxpayer has not exceeded the 50% limit, contributions of capital gain property generally may be deducted up to 30% of AGI. If a contribution exceeds these "percentage limits", the "excess" may be carried forward and deducted during the next five years. The result is there often will not be a complete "offset", which means the taxpayer will owe tax, despite having made a significant charitable contribution of IRA assets.

In addition to these "percentage limits", Internal Revenue Code § 68 requires the taxpayer to reduce most itemized deductions (including charitable contribution deductions) if he or she has adjusted gross income in excess of a threshold amount (indexed for inflation). For the taxpayer in this situation, the total of itemized deductions is reduced by 3% of AGI over the threshold, but not by more than 80% of itemized deductions subject to the limit. This reduction may prevent the taxpayer from fully utilizing the charitable contribution deduction arising from his or her gift of IRA assets.

The net result can be a tax liability, even though a charitable contribution is made. This is a serious obstacle to even the most generous potential donor.

The legislation we support would remove these disincentives to philanthropy. The legislation would enable the donor, commencing at age 59½, without penalty to "roll over" IRA assets, either as an outright gift or to a qualified life-income gift vehicle. The donor would not be subject to tax at the time of withdrawal and transfer, but also would receive no tax deduction. No charitable contribution deduction would be allowed. All income from the life-income gift would be subject to tax at ordinary income tax rates.

If the donor has saved in an IRA more than what is needed for a secure retirement, he or she would have the opportunity without incurring a tax penalty to make a charitable contribution from IRA assets. If this option were available, we believe many persons would take advantage of this opportunity, instead of deferring IRA distributions until age 70½ and then taking out only the annual minimum required by law. This is what many upper-income taxpayers now do.

Permitting tax-free roll-overs, commencing at age 59½, to life-income charitable gifts will encourage earlier distributions, which also means earlier taxation. It is because of this earlier taxation that the revenue loss estimated by the JCT is small.

The JCT, by letter dated April 12, 2001 to Representative Jennifer Dunn, provided an estimate of the revenue effect of the legislation. The JCT concluded that allowing tax-free withdrawals from IRAs for charitable purposes would result in a total revenue loss of $3.3 billion for fiscal years 2002 through 2011.

We are aware there are certain differences between IRA-to-charity rollover legislation. The "narrower" version of the IRA-to-charity rollover legislation provides for

a direct "roll over" to charity (but not to a life-income gift vehicle) at age 70½. The "broader" version of the legislation, which we support, provides for the rollover either to the charity directly or to life-income charitable gifts beginning at age 59½.

According to revenue loss studies by the JCT the difference in revenue loss between the two versions is only approximately $700 million over ten years.

The best way to encourage charitable giving is to provide the philanthropically inclined individual with as many options as possible. Direct gifts to charity are an appealing option, but indirect giving through split-interest gifts is equally, if not more so. This is because the use of split-interest gifts more explicitly accommodates charitable giving with the need to ensure an income stream for life to the donor. It also enables the donor to capture the psychological aspects of giving to one's favorite charity in a way gifts at death cannot. Permitting tax-free rollovers to split-interest gifts provides taxpayers with a tested and well-regulated option that reconciles retirement security and charitable giving to the benefit of the donor and the taxpayer.

Shriners Hospitals believes that the proposed legislation will provide much needed support for major gifts to charities at a modest cost to the Treasury. In actuality, there likely would be no cost. The enhanced ability of charities, funded by IRA rollover gifts, will relieve the federal government of expenditures which otherwise would be needed to provide health care and similar services.

The present opportunity is truly a "win-win" situation for charities, the Treasury, and the American people. This is why we so strongly support this legislation.

Chairman MCCRERY. Thank you, Mr. Yopp. Mr. Reighard.

STATEMENT OF BILL REIGHARD, PRESIDENT, FOOD DONATION CONNECTION, NEWPORT, VIRGINIA

Mr. REIGHARD. Thank you for the opportunity to talk today.

Food Donation Connection assists restaurants in providing an alternative to discarding excess wholesome, unsold food by linking those restaurants to food rescue programs that help the hungry.

Our mission statement is from John 6:12, which reads, "When they had all had enough to eat, Jesus said to his disciples, 'Gather the pieces that are left over. Let nothing be wasted.'"

I am here to talk about the donated food provisions in H.R. 7. These provisions would eliminate the uncertainty that exists concerning the tax deduction a company can take when it donates its wholesome excess food to nonprofit organizations that serve those in need.

Doing so will encourage food service companies to make the effort needed to save their excess food, which otherwise would go to waste. These provisions have the support of nonprofit organizations that serve those in need, as well as the National Restaurant Association and the National Council of Chain Restaurants.

Mr. Chairman, make no mistake, hunger remains a pressing social issue in this country. Despite our economic prosperity, 36 million Americans, including 14 million children, don't get enough to eat.

A report by the Conference of Mayors shows demand for emergency food increasing. As individuals leave welfare and enter the workplace, they often turn to nonprofit, private sector groups for food to help make ends meet.

Ironically, in spite of this need, millions of tons of good, wholesome excess food are discarded every day in this country. Why? Because it costs business money to properly save this food.

Recognizing this, Congress included legislation in the tax reform act of 1976, designed to encourage donations of excess food to 501(c)(3) organizations that serve infants, ill or the needy.

Section 170 of the IRS Code allows a deduction equal to the donated food basis cost plus one-half of appreciated value, not to exceed twice the basis cost. This last limitation, as well as strict receipting requirements, ensures that company cannot earn a profit by producing food specifically for donation.

Two issues with the existing law discourage food service companies from donating.

First, the IRS challenges, as an industry-coordinated issue, any appreciated value placed on the donated food. Many companies are not willing to take on the IRS to gain a deduction to offset the additional cost of preparation, packing, and storage of donated food. Rather, they find it easier and actually cheaper to simply throw the food away and take the standard deduction.

Second, current law makes this deduction available only through regular C corporations. Most restaurant companies are set up as limited liability or Subchapter S corporations or sole proprietors and, therefore, are not eligible for the deduction.

An example of this impact was felt by hunger relief agencies in the Albany, New York, area. The Albany Pizza Huts donated food when they were company-owned. In April 1999, they were sold to a franchisee that is not eligible for the deduction. Only two of the 16 Pizza Huts continue to donate.

The donated food provisions in H.R. 7 codify fair market value and make all business entities eligible for the deduction.

The programs we manage have been successful because they use the tax savings to provide an economic incentive to the restaurant managers for donating. When this incentive is lost, donations drop significantly or stop altogether.

As in the Albany example, we see this repeatedly when restaurants are sold to franchisees who are not eligible for the deduction under current law.

We know that food service donations of wholesome excess food to private sector nonprofit hunger agencies works. These donations provide needed food, as well as a great source of protein, for these agencies.

To increase these food donations, Congressman Hall has been introducing legislation in Congress for number of years. In the 106th session, Congressman Amo Houghton joined him in introducing H.R. 1325, the Good Samaritan Tax Act, and 82 House members signed on as cosponsors. This is an idea whose time has come.

I believe that these provisions will encourage more restaurants to donate food, which will contribute to solving the hunger problem in America today.

Mr. Chairman, I am hopeful that you and the Subcommittees will do everything in your power to enact these donated food provisions this year. Thank you.

[The prepared statement of Mr. Reighard follows:]

Statement of Bill Reighard, President, Food Donation Connection, Newport, Virginia

DONATED FOOD PROVISIONS WITHIN HR 7

Good Afternoon. I would like to thank Chairman McCrery, Chairman Herger, ranking member McNulty, ranking member Cardin, and other members of the Subcommittees for this opportunity to speak on the donated food provisions included in HR 7.

These provisions, if enacted, will go a long way toward solving the issue of hunger in America. By allowing companies to offset the costs associated with donating surplus wholesome food to hungry Americans, these provisions will encourage more food service companies to make the effort needed to set up food recovery and donation programs. These provisions have the support of the National Restaurant Association, the National Council of Chain Restaurants, and those non-profit organizations that serve those in need.

MY BACKGROUND:

Since 1992, I have been President of Food Donation Connection (FDC). FDC assists restaurants in providing an alternative to discarding excess wholesome unsold food by linking those restaurants to food rescue programs and agencies that help the hungry. FDC manages the donations of over 4500 restaurants to 1500+ hunger agencies.

Our Mission Statement is from John 6:12, which reads: "When they had all had enough to eat, Jesus said to his disciples, 'Gather the pieces that are left over. Let nothing be wasted.'"

We accomplish this by handling coordination and administration for our client restaurants. This includes determining recipient food rescue programs and handling paperwork, maintaining an 800 number for use by donor restaurants and hunger agencies, tracking and reporting all excess food donations, tax savings calculation and reporting and providing the ongoing follow-up and monitoring necessary for successful implementation and growth.

Prior to establishing Food Donation Connection, I worked for 17 years in the food service industry, holding management positions in operations, quality assurance, product development and technical services.

HUNGER EXISTS IN AMERICA

Despite our country's economic prosperity, hunger is a pressing social issue in America. According to a report by Tufts University, 36 million Americans, including 14 million children, live in food insecure households. A United States Conference of Mayors report shows demand for emergency food increasing, and that over 20% of this demand goes unmet. As individuals leave welfare and enter the work place, they often turn to food banks and other non-profit private sector groups for food to help make ends meet. Layoffs also remain widespread as companies reconstitute themselves to compete in the changing economy.

WHOLESOME EXCESS FOOD IS GOING TO WASTE

At the same time that many Americans go hungry, good wholesome food is going to waste. One of the major reasons this food is not getting to the hungry is because businesses cannot offset the costs of donating it.

The agency receiving the donation must complete and sign the bottom of this log before it is mailed.
Mail the signed top (white) copy to: (Name & Address of restaurant)
OR You may fax it to 1-000-000-0000 (Toll Free). Questions? Please call 1-000-000-0000 (Toll Free).
The agency receiving the donated food product from the above restaurant confirms that it was used in compliance with the following requirements.

The donated product was used in a use related to our tax-exempt purposes and solely for the care of the ill, needy or infants. The donated product was not transferred in exchange for money, other property or services. We are a Section 501(c)(3) tax exempt, U.S. nonprofit public charity qualified to receive tax-deductible contributions. We are not a private foundation.
We will maintain adequate books and records to show the disposition or use of the donated product, which will be made available to the Internal Revenue Service upon request.
No goods or services were provided by us in exchange for this charitable donation.
Agency Name: --------
Address: ---------
City, State, Zip Code: -------
Agency Contact: Name: -------- Signature: --------
White Copy: Forward to Restaurant Office Yellow Copy: Keep in Unit

It takes management commitment and money to properly save excess food for donation to hunger agencies. Prepared food must be properly saved, packaged, labeled

and kept refrigerated or frozen until it is picked up by the agency. Operating procedures and food safety standards must be developed and implemented. Hunger agencies need to be selected and approved, and ongoing pick-up schedules established. A system for donation reporting and tracking must be in place. Tax regulations require strict receipting procedures and limit the type of non-profit organizations that can receive the donation. An example of these requirements as they appear on one of our client's food donation log appear below:

The agency receiving the donation must complete and sign the bottom of this log before it is mailed.

Mail the signed top (white) copy to: (Name & Address of restaurant)

OR You may fax it to 1-000-000-0000 (Toll Free). Questions? Please call 1-000-000-0000 (Toll Free).

The agency receiving the donated food product from the above restaurant confirms that it was used in compliance with the following requirements.

The donated product was used in a use related to our tax-exempt purposes and solely for the care of the ill, needy or infants. The donated product was not transferred in exchange for money, other property or services.

We are a Section 501(c)(3) tax exempt, U.S. nonprofit public charity qualified to receive tax-deductible contributions. We are not a private foundation.

We will maintain adequate books and records to show the disposition or use of the donated product, which will be made available to the Internal Revenue Service upon request.

No goods or services were provided by us in exchange for this charitable donation.

Agency Name: --------

Address: --------

City, State, Zip Code: --------Agency Contact: Name: -------- Signature: --------

White Copy: Forward to Restaurant Office Yellow Copy: Keep in Unit

A number of expenses are incurred when a restaurant donates its excess food. Based on our experience, provided below is an example of the typical cost associated with food donation programs. Note that costs will vary from company to company based on type and value of food donated, the type of storage containers needed, storage method and other factors. This example assumes the value of the donated food to be two times cost. Costs represent a percentage of tax savings. Since the tax incentive is a deduction (as opposed to a credit) a company must be profitable to realize any tax savings. Two tax rates are used in this example.

Program Cost Item	Cost: % of tax savings at 35% Tax Rate	Cost: % of tax savings at 15% Tax Rate
Storage & Transport Containers	4%	9%
Restaurant Manager Bonus Costs	10%	10%
Employee Labor to Save Food	10%	23%
Management oversight	3%	7%
Program Management	15%	25%
Company Incentive After Costs	58%	26%

TO INCREASE DONATIONS, COMPANIES MUST BE ABLE TO OFFSET COSTS

Obviously, if we are to encourage food service companies to donate rather than discard usable surplus food, we need to allow them to offset the costs of doing so. In fact, Congress did include legislation in the Tax Reform Act of 1976 designed to help companies offset the costs of donating food to 501(c)(3) organizations that serve infants, ill or needy. Section 170 of the IRS Code allows a deduction equal to the donated food basis cost plus ‡ of the appreciated value, not to exceed twice the basis cost. This last limitation, as well as strict receipting requirements, insures that a company cannot earn a profit by producing food specifically for donation.

Example Calculation of Incentive Provided by Tax Reform Act of 1976

The Tax Reform Act of 1976 allows regular 'c' corporations that donate excess food to certain specified 501 (3) non-profit organizations that serve the ill, infants or needy to take an incremental deduction for donated food. Strict receipting requirements must be met to take the incremental deduction

Example of potential tax benefit—

	Product Sold	Surplus Not Donated	Surplus Donated
Sales revenue	$1.00	$.00	$.00
Base cost (food & direct labor)	.35	.35	.35
Gross margin/(loss)	.65	(.35)	(.35)
Incremental tax deduction	—	—-	.33*
Total income/(deduction) for tax	.65	(.35)	(.68)
Tax (assumes 35% rate)	(.23)	.12	.24
Gross margin/(loss) after tax	$.42	$(.23)	$(.11)

In this example, donating reduces the after tax cost of surplus by 52%. The company still loses money on the donated food. The amount of the loss is reduced.

* Incremental deduction is one-half of the foods' appreciated value (FMV less base cost) however base cost plus the incremental deduction cannot exceed twice base cost.

PROBLEMS WITH THE CURRENT LAW EXIST

While the food donation provisions of the 1976 act were well intended and designed to encourage companies to donate food, two problems exist today that actually *discourage food service companies from doing so.*

First, the IRS challenges, as an industry coordinated issue, any appreciated value placed on the donated food. The uncertainty of the value of their deduction prevents many companies from investing in and incurring the costs of food donation programs. In fact, *under current IRS interpretation, it actually makes more financial sense for a company to throw away excess food rather than donate it.*

Second, this deduction is only available to regular 'c' corporations. *Many restaurant companies are set up as limited liability or sub-chapter s corporations or sole proprietors and are not eligible for the deduction.*

THE DONATED FOOD PROVISIONS IN HR 7 ADDRESS THESE PROBLEMS

These provisions restore some common sense to our tax code by addressing these two issues.

First, the provisions clarify the determination of fair market value when internal company policies relating to the treatment of food are also involved, ensuring that restaurants that donate food to non-profit hunger relief agencies will be allowed to take the full deduction available to them under current law. Free of the risk of having to defend themselves against an IRS challenge, more businesses will be encouraged to donate food.

Second, the provisions extend the deduction to all business entities, providing the incentive to thousands of restaurants that are not organized as "c" corporations.

FOOD DONATION PROGRAMS MEET LOCAL COMMUNITY NEEDS

Despite strong economic growth, hunger remains a problem in every state. Hunger exists in rural areas as well as in urban areas. A major strength of food donation programs is that restaurants operate in every part of the country. The result is a largely untapped source of excess food in each of our communities.

A strong network of non-profit agencies that serve those who are hungry exists across the country. America's Second Harvest affiliate food banks, independent food rescue programs and other national organizations provide food to these agencies. However, increased demand at these agencies has resulted in the need for additional food. At the same time, food-manufacturing companies, a traditional source of excess food, have become more efficient in their operations. In addition, a secondary market for excess manufactured goods, i.e. Big Lots, Odd Lots, Internet surplus food sales etc., has developed. This has reduced the food available at a time when need is increasing. These agencies have a need for food now. The donated food provisions in HR 7 would increase the supply of available wholesome food by encouraging additional restaurants to donate their excess food.

Mr. Chairmen, I appreciate the opportunity to testify here today. I encourage you and your committees to do everything in your power to enact these donated food provisions this year.

Testimonials

We know that food donation programs work. The unsolicited testimonials on the next four pages give an insight into the heart of Pizza Hut's Harvest program.

Lazarus ✞ House
Luke 16:19-31
214 Walnut St.
St. Charles IL 60174
630-587-2144

March 3, 1999

Pizza Hut Harvest
1453 Spruce Run Rd.
Newport VA 24128

Gentlepersons,

Enclosed please find the documentation for the month of February that you require for the Harvest program. This is our first month participating in the program and I want to thank you and tell you what a blessing it has been to us.

Lazarus House is a homeless shelter. One of the "extras" that people who become homeless usually miss is restaurant food. While many individuals and groups from service clubs and churches have been generous in donating food, the Pizza Hut pizza has been a special treat and has helped to "normalize" life to some degree for our guests. It has filled in the gaps when donated meals were not quite adequate for the numbers we needed to serve and it has been a special treat for a snack.

I also want to compliment the manager of the Geneva Pizza Hut, Beverly, and her fine staff. They have been extremely helpful and courteous and made this whole experience helpful and positive. Thank you for making this available to shelters and not for profit groups. I think it is a good business decision, and I know it is a real blessing.

In His Service,

Darlene Marcusson
Executive Director

SOCIETY OF ST. VINCENT de PAUL
Our Lady of The Lakes Conference
5210 Maximilian Street
Odessa, FL. Florida 33735
Phone (813) 374-0124

March 12, 1999

Mr. Bill Reighard
Pizza Hut Harvest Program
165 Windbrush Lane
Newport, Virginia 24128

Dear Mr. Reighard:

The St. Vincent de Paul Society of Our Lady of the Lakes would like to express our sincere gratitude and appreciation for your continued effort and support. Your Pizza Hut Harvest Program has made a substantial difference in our ability to serve the needy of our community.

The joy and happiness you have enabled us to give to others is priceless. We see the smiles on the faces of the youngsters, and the families with teens are overjoyed to receive such a treat. The hungry person living out of a car who received some staple foods, plus a PIZZA, is sure things are going to get better. We have even the elderly who are living on a very limited income and who regard this as a rare event. We took care of a lady who had only one pair of worn shoes and was living on applesauce for almost a week. When we gave her a good supply of food, two pairs of shoes and topped it off with a PIZZA, she cried, hugged our volunteer, and said she thinks she died and went to heaven.

Yes indeed, your benevolent program does touch many lives and puts a smile beyond belief on many hearts and faces.

Thank you once again on behalf of all the people we are privileged to help. Please continue your splendid community support.

Sincerely,

Bill Componsky,
President

LAKEVIEW
SHELTER

March 10, 1999

Mr. Bill Reighard
Pizza Hut Harvest Program
165 Windrush Lane
Newport, Virginia 24128

Mr. Reighard

Just a note to let you know how much we, the staff and clients of Lakeview Shelter, appreciate your "harvest program". Tuesdays are always a popular day as we have Pizza Hut Pizza for lunch. Since our weekly pickup is on Monday afternoon in fact once every three or four weeks we pickup enough for two lunches. Needless to say there are never any leftovers.

Your staff at the Pizza Hut located at 5240 Pulaski Rd. in Chicago are truly outstanding and most helpful in any way possible. I always look forward to going there for our pickups. It is a most pleasant experience.

As you may already know Lakeview Shelter is a full service Men's Shelter, located at the shadows of Wrigley Field. We house 27 men on any given night and provide case management, referrals and a day program. We also have a supportive housing program which is more in the independent living mode (in SRO's or efficiency apartments). This program presently houses 18 men and we are slated to increase that to 27 in the near future.

Once again, on behalf of everyone at Lakeview Shelter Thank You, for your generous and practical contributions.

Sincerely,

Paul Mangrides
Resource Coordinator

LAKEVIEW SHELTER, INC.
835 West Addison Chicago, IL 60613 773-327-1389 Lakeviewshelter@mail.prairie.org

Mr. MCNULTY. Thank you, Mr. Reighard.

Actually, Dr. Melendez is next on the list, Mr. Boshara. If you will just be patient, we will get to you. Dr. Melendez.

STATEMENT OF SARA MELENDEZ, PH.D., PRESIDENT AND CHIEF EXECUTIVE OFFICER, INDEPENDENT SECTOR

Dr. MELENDEZ. Good morning. I am Sara Melendez, president and CEO of Independent Sector, a coalition of more than 700 national nonprofit organizations that collectively represent tens of thousands of community-based nonprofit service providers, as well as foundations and companies that share a strong commitment to community involvement, volunteering, and philanthropy.

Our network represents the vast diversity of the nonprofit sector and the field of philanthropy. And together, we represent millions of volunteers, donors, and people served in communities throughout the nation and, indeed, throughout the world.

I am delighted to testify today in support of the charitable incentives package, Title I of the Community Solutions Act. Independent Sector commends President Bush and the sponsors of this bill for their efforts to encourage charitable giving by all Americans.

America's charitable nonprofits, both secular and faith-based organizations, are vital to our democracy and our quality of life. They depend on a strong base of charitable giving to sustain programs and services that benefit all citizens, particularly our most vulnerable individuals and families.

Americans have a long tradition of giving and volunteering that stands as a model and inspiration for nations around the world. But we all know that more must be done if our charitable nonprofits are to meet the challenges facing our communities.

Every year at tax time, those taxpayers who itemize their deductions receive a powerful, tangible message that their charitable gifts don't just benefit the causes and services they choose to support; those gifts also provide them with a clear tax benefit.

But today that message goes out only to the 30 percent of taxpayers who itemize their deductions. The other 84 million hard-working, primarily low and middle income Americans, who claim the standard deduction, do not receive any recognition or encouragement through the Tax Code for their charitable giving.

Intended or not, the message to those taxpayers is that their charitable contributions are not worth counting.

Research has shown conclusively that while people do not choose to give simply because of tax policy, tax policy does affect their decisions about how much to give, how to give, and when to give. At every income level, taxpayers who itemize their deductions at tax time are more likely to make charitable contributions, and to make significantly larger contributions than those who do not itemize deductions.

Enacting the President's proposal to extend the charitable contribution deduction to all taxpayers, not just those who itemize, will clearly result in a substantial increase in the amount that Americans give to charity. Perhaps even more importantly, it will encourage millions of Americans to begin making charitable con-

tributions. And once they discover how good it feels to give back to the community, they are far more likely to get involved and make it a lifelong habit.

You have heard about the study conducted by PricewaterhouseCoopers for Independent Sector that showed that if President Bush's proposal to extend the charitable contribution deduction to nonitemizing taxpayers were enacted, it would increase charitable giving by as much as $14.6 billion annually.

Just think of the new services and programs these dollars could produce: more quality childcare programs, more health and wellness programs for our elderly citizens, more research and services to prevent and cure disease, more arts and culture programs to nourish and sustain our spirit, more opportunities for people to celebrate and express their religious faith. The list is endless.

The nonitemizer deduction will provide a substantial return on investment by fueling the engine of charitable giving so vital to sustaining and improving services provided by charitable organizations to our communities. The new community wealth that will be generated goes far beyond the direct contributions that nonitemizer deductions would foster.

Title I of the Community Solutions Act also includes another important incentive to increase charitable giving, and that is allowing individuals to make contributions directly to charity from their IRAs without incurring additional tax liabilities.

Due to the strong economy and the stock market increases over the last several decades, many individuals have more than sufficient funds to retire comfortably, and they would like to be able to contribute some of those funds to the causes and charitable programs they care about while they are still living.

Unfortunately, under current law, they must include those contributions in their taxable income, and the amount they contribute could be affected by other restrictions, such as the adjusted gross income (AGI) percentage limitations on contributions. So as a result, very few individuals now donate IRA funds to charity during their lifetimes.

Section 102 of Title I would remove those barriers to giving and enable many middle-income Americans to have accumulated funds in their IRAs contributed to charity while they are alive.

Congress has just passed its first major tax bill, and, unfortunately, the President's proposal to encourage increased charitable giving was not included. We strongly urge you to correct that now.

Enacting the charitable deduction for taxpayers who do not itemize their deductions is the only real way for Congress to send the message that charitable giving is an important value for all Americans. This is one tax investment that will yield tremendous benefits for everyone.

Thank you.

[The prepared statement of Dr. Melendez follows:]

Statement of Sara Melendez, Ph.D., President and Chief Executive Officer, Independent Sector

Mr. Chairmen and Members of the Committee:

Thank you for the opportunity to testify on the Charitable Giving Incentives Package presented in Title I of H.R. 7, the Community Solutions Act, sponsored by Rep-

resentative J.C. Watts, Representative Tony Hall, and the Speaker of the House, Representative Dennis Hastert.

I am Sara Melendez, President and CEO of Independent Sector, a coalition of more than 700 national organizations and companies representing the vast diversity of the nonprofit sector and the field of philanthropy. Our members include many of the nation's most prominent nonprofit organizations, leading foundations, and Fortune 500 corporations with strong commitments to community involvement, as well as a vast array of networks of community and faith-based organizations working to improve the quality of life throughout the nation. Our network represents millions of volunteers, donors, and people served in communities around the world. Independent Sector members work globally and locally in human services, education, religion, the arts, research, youth development, health care, advocacy, democracy, and many other areas. No other organization represents such a broad range of charitable organizations and activities.

Independent Sector strongly commends President Bush, Speaker Hastert, Representative Watts, and Representative Hall for their efforts to encourage charitable giving by all Americans. America's charitable nonprofits, both secular and faith-based organizations, are vital to our democracy and our quality of life. We depend on a strong base of charitable giving to sustain programs and services that benefit all citizens, particularly our most vulnerable individuals and families. There are two provisions outlined in Title I of H.R. 7 that would have a tremendous impact on the ability of America's charitable nonprofits to raise private funds to support the vital services they provide to communities throughout our country—the first would extend the tax deduction for charitable contributions to all taxpayers, not just the 30% who itemize deductions on their annual returns, and the second would waive the income inclusion for charitable contributions from individual retirement accounts, thus providing incentives for more individuals to make contributions while they are living rather than solely through bequests.

Our tax code has been and remains the most powerful tool available to send the message that we as Americans highly value and strongly support charitable giving. But today, that message goes out only to the 30% of taxpayers who itemize their deductions. The tens of millions of hard-working, primarily low- and middle-income Americans who claim the standard deduction do not receive any recognition or encouragement through the tax code for their charitable giving. Intended or not, the message those taxpayers receive is that their charitable contributions are not worth counting.

Tax policy should strongly encourage giving by all Americans—not just those taxpayers who itemize deductions. President Bush's proposal to extend the charitable contributions deduction to all taxpayers would provide that strong incentive and encouragement. This proposal has been set forth in Title I, Section 101, of H.R. 7, and has also been included separately in bills introduced by Representative Phil Crane (H.R. 777) and Representative Jennifer Dunn (H.R. 824). Enacting the charitable deduction for taxpayers who do not itemize their deductions is the only real way for Congress to send the message that charitable giving is an important value for **all** Americans.

Every year at tax time, taxpayers who itemize their deductions receive a tangible reminder that their charitable giving provides a clear tax benefit and if they continue to give—or better yet, increase the amount they contribute—they will continue to receive that tax benefit. Our most recent analysis of giving patterns using data drawn from the IRS Statistics of Income Bulletin for Spring 2000 and Independent Sector's biennial survey of Giving and Volunteering shows clearly that **at every income level**, taxpayers who itemize their deductions contribute significantly more to charity than those who do not itemize deductions.

Beyond its powerful symbolic importance, the non-itemizer deduction would provide a strong stimulus for increased giving and new givers. A recent report by the National Economic Consulting Division of PricewaterhouseCoopers concluded that had the non-itemizer deduction as proposed by President Bush been in effect in 2000, total charitable giving would have increased by $14.6 billion—an increase of 11.2%. Perhaps even more important, PricewaterhouseCoopers concluded that the non-itemizer deduction would have stimulated charitable gifts by 11 million Americans who would otherwise have given nothing. The long-term importance of encouraging these millions of Americans to develop the habit of giving will be invaluable to the ability of charitable nonprofits to carry out the programs and services so imperative to the continued health and vitality of communities throughout America.

There is further clear and compelling evidence that providing a non-itemizer deduction would dramatically increase charitable contributions. In 1981, Congress enacted the non-itemizer deduction on a 5-year trial basis from 1982 to 1986. The de-

duction was phased in gradually and was in full effect only in 1986. Significantly, between 1985, when non-itemizers were allowed to deduct only 50% of their contributions, and 1986, when non-itemizer gifts were fully deductible, total giving by non-itemizers increased by 40%, according to IRS data. Sadly, that legislation was permitted to sunset in 1986, and there was, in fact, a significant drop in giving as reported in Giving USA the following year.

The increased charitable contributions that will result from the non-itemizer deduction will provide much needed funding to thousands of community-based and religious organizations that are addressing America's most urgent social concerns. Well over half of the contributions made by non-itemizers go to religious and human service organizations. A tax deduction for charitable contributions will provide additional funds to those non-itemizers who already give to increase their donations, and it will provide the needed incentive to new givers to make contributions to the agencies that serve their community.

We have received substantial documentation from our member organizations that the vast majority of their contributors are low- and middle-income taxpayers whose modest contributions of $10, $50 and $100 provide core support for the services they provide. If the non-itemizer deduction were enacted, many of these agencies could realize an 11% increase in charitable contributions and they would put those dollars to work in expanded and improved services. The American Heart Association has estimated that this provision would enable them to fund an additional $13.95 million in research projects that would lead to stronger prevention, treatment, and cure for heart disease and strokes.

In just one community served by The American Cancer Society, Austin, Texas, these additional dollars would mean 44 more cancer patients who do not have family or friends available to help would receive transportation to and from cancer-related treatments, more children who have or have had cancer would be able to enjoy horseback riding and swimming at Camp Discovery, and 29 more women diagnosed with breast cancer would be able to participate in the Reach to Recovery program. Multiply that by the thousands of communities where the American Cancer Society works to prevent cancer, save lives, and diminish suffering from cancer through research, education, advocacy and service.

Then multiply those results by the thousands of community and faith-based organizations across the country who are working hard to help young people find productive after-school activities that enrich their lives and enable them to gain critical life and job skills, to help older Americans participate in health and wellness programs, or to provide quality child care for working parents. It is clear that extending the tax deduction for charitable contributions to the 70% of American taxpayers who do not currently itemize deductions—84 million Americans—would produce significant benefits to our communities far beyond the direct benefits to taxpayers themselves.

The second provision in Title I of H.R. 7, while impacting a smaller number of taxpayers directly, would remove a significant tax barrier that discourages people from giving back to the community from their accumulated retirement earnings in Individual Retirement Accounts (IRAs). Due to the strong economy and the stock market boom over the last several decades, many individuals have more than sufficient funds to retire comfortably, and they would often like to make contributions to their favorite charitable nonprofit organization while they are still living rather than through their estate. Under current law, those individuals must include any withdrawals from their IRA in their taxable income which may then be offset in part by a charitable deduction. In addition, the size of the deductible portion of their charitable gift would be limited by such restrictions as the percentage of Adjusted Gross Income (AGI) limitation on charitable deductions and the 3% floor on all itemized deductions. As a result, very few individuals donate IRA funds to charity during their lifetimes.

Section 102 of Title I in the Community Solutions Act (H.R. 7) would remove the tax barriers to such donations by allowing a donor who had reached age 59½ to exclude any IRA funds withdrawn and transferred to a charity from his or her income when filing a tax return for that year. The donor would be eligible to claim a charitable deduction only to the extent that the IRA was funded with after-tax dollars. This proposal is widely supported in the nonprofit sector, and would, if enacted, unlock substantial new resources for the support of charitable organizations and their public-service missions. Although charitable organizations frequently receive inquiries from potential donors about giving regular IRA funds during their lifetimes, when donors realize that they may have to pay a significant amount of tax to make the contribution, these types of gifts rarely get made.

These two provisions in Title I of H.R. 7 are good public policy. They would unlock substantial new resources for the support of charitable organizations and their pub-

lic-service missions. Research conducted by Independent Sector and others has shown conclusively that while the decision whether to give is not fundamentally affected by tax policy, the decision about how much to give, how to give, and when to give, is.

The work of our secular and faith-based charitable nonprofits is integral to strengthening communities throughout our country and addressing the pressing issues and concerns they face today. The non-itemizer charitable deduction will provide significant help in recognizing and encouraging charitable giving by all Americans to support these important efforts. Moreover, it will provide the needed incentive to spur more Americans to get involved in community-based organizations and begin a life-long habit of making charitable contributions.

Similarly the provision to allow tax-free distributions from individual retirement accounts for charitable purposes would enable the many middle-income Americans who have accumulated funds in their IRAs that now exceed their needs and expectations to contribute some of those funds to charity without incurring detrimental tax consequences.

Congress has just passed its major tax bill without including this major component of President Bush's initiative. The non-itemizer deduction would bring significant new resources to the thousands of community and faith-based organizations throughout the country that are on the front lines of serving our most vulnerable people. We have heard how other tax breaks will bring a strong return on our tax investment through economic growth. The non-itemizer deduction will result in an equally important—or perhaps even more important—return on investment by creating a new stream of community wealth that will help to feed the hungry, provide job training and skills for those entering the work force, care for our children and those who are suffering from illness, and nourish the health and spirits of all our citizens. The return on our investment will be much greater than the direct contributions this proposal will foster or the additional tax relief it will provide for the primarily low- and middle-income taxpayers who do not itemize deductions.

Independent Sector will continue to work for the President's initiative to increase charitable giving and we expect to see passage of the non-itemizer contribution in this session of Congress. We therefore strongly urge your support for Title I of H.R. 7. I would be pleased to answer any questions that you may have.

Independent Sector

A Charitable Tax Deduction for Nonitemizers Should Be Enacted by Congress

Since Congress permitted the charitable tax deduction for nonitemizers to sunset in 1986, seven of ten taxpayers, the nonitemizers, can no longer deduct their charitable contributions and the resulting loss in charitable giving has been substantial. This becomes obvious when a comparison is made of the amount contributed by itemizers and nonitemizers who are in the same income groups.

Income Group	Amount Contributed by Itemizers	Amount Contributed by Non-itemizers	% of Income Contributed by Itemizers	% of Income Contributed by Non-itemizers
$1 < $5,000	$308	$29	10.6%	1.1%
$5,000 < $10,000	$738	$138	9.3%	1.8%
$10,000 < $15,000	$941	$216	7.4%	1.7%
$15,000 < $20,000	$1,186	$285	6.8%	1.7%
$20,000 < $25,000	$1,150	$330	5.1%	1.5%
$25,000 < $30,000	$1,333	$364	4.8%	1.3%
$30,000 < $40,000	$1,349	$465	3.9%	1.3%
$40,000 < $50,000	$1,425	$654	3.2%	1.5%
$50,000 < $75,000	$1,740	$965	2.8%	1.6%
$75,000 < $100,000	$2,357	$1,333	2.7%	−1.6%
$100,000 < $200,000	$3,466	$1,254	2.6%	1.0%
$200,000 < $500,000	$7,694	$2,934	2.7%	1.0%
$500,000 < $1 million	$19,651	$6,876	2.9%	1.0%
$1 million or more	$140,972	$21,015	4.7%	1.0%

The average annual amount contributed per tax return for itemizers is $2708; the average for nonitemizers is $328.

Eighty-seven million tax filers are nonitemizers. It is clear that if all nonitemizers raised their contributions to the amount given by itemizers, giving would increase

greatly. In fact, charitable contributions by nonitemizers increased by 40% or $4 billion from 1985 to 1986, according to Internal Revenue Service data. Nonitemizers were permitted to deduct only 50% of their charitable contributions and they gave $9.5 billion that year. In 1986, they could deduct a full 100% and, according to the IRS, they gave $13.4 billion—an increase of 40%. The message from that experience is apparent. Charitable tax deductions do stimulate substantially increased giving from middle income Americans.

Nonitemizers are low to middle income American households (70 million have incomes under $30,000 a year) who support services such as the Red Cross and the American Cancer Society. They give to churches and synagogues, environmental organizations, schools, colleges, hospitals, food programs for the homeless, and the Boy Scouts and Girl Scouts. They give to advocacy organizations, health research, the arts, international development, and myriad activities in the public interest that enrich our society and protect its people. Congress should enact a legislation that will permit these moderate income Americans to take a deduction for their contributions to charity.

Source: Data prepared for *The New Nonprofit Almanac and Desk Reference by Independent Sector (Jossey-Bass, 2001) using data from the IRS Statistics of Income Bulletin, Spring 2000.*

Chairman MCCRERY. Thank you, Dr. Melendez. Diana Aviv?

I am sorry. Mr. Boshara was next. Mr. Boshara, please proceed.

STATEMENT OF RAY BOSHARA, POLICY DIRECTOR, CORPORATION FOR ENTERPRISE DEVELOPMENT

Mr. BOSHARA. Mr. Chairman, members of the Subcommittees, thank you very much for the opportunity to be here today.

I also want to express my gratitude to Congressman Watts and to Congressman Tony Hall.

Tony Hall is my former boss, and I commend Tony for bringing individual development accounts (IDAs) to the attention of Congress 10 years ago when he was the chairman of the House Select Committee on Hunger.

I also want to thank the many members of the Ways and Means Committee who have supported IDAs and asset building. Thirty-five House members joined Congressmen Pitts and Stenholm yesterday in introducing H.R. 2160, the Savings for Working Families Act of 2001, which is Title III of H.R. 7.

I also want to thank Speaker Hastert for his support of IDAs and finally, President Bush for including an IDA tax credit in his budget this year.

I would like to start with just a couple of stories. Monica Grant of Shreveport, Louisiana, was homeless and on drugs. Mary Hasino of Yreka, California, described her life as a financial mess. Debra Howell of Albany, New York, was living paycheck to paycheck and had no provision for her future. And Mike and Dawn Ferrill of Tulsa, Oklahoma, couldn't even afford to buy shoes for their kids.

All of these people were working hard and getting by, but they were never getting ahead. They owed, but they never owned. They were spectators to a spectacular economy, but they were never players in that economy.

Thanks to individual development accounts, or IDAs, they are now homeowners, small-businessowners, pursuing postsecondary education, saving for their retirement, and opening savings accounts for their kids. They are five of 10,000 people across the United States who are saving in an IDA.

And IDA is a matched savings account restricted to first home purchase, post-secondary education, and small-business development. If you will, it is a thrift savings plan or 401(k) for low-income people.

IDAs include financial education, and are administered by a wide range of nonprofit organizations in partnership with financial institutions.

When we talk about IDAs, we are really talking about assets. Not what you earn, but what you own, your piece of the American dream.

Assets matter. That is the bottom-line here. Assets make financial stability possible. They make investments in your future feasible. And they make hope real. I ask all of you to imagine your life, what it would be like if you didn't have assets.

Hundreds of researchers and statistics all tell the same three stories: low-income people have few, if any, assets; the wealth gap dwarfs the income gap; and the asset poverty rate exceeds the income poverty rate in the U.S.

Unfortunately, government policy has been part of the problem here. Basically, there have been two policies. There has been an asset development policy: $300 billion a year in tax benefits are provided to help folks like us get homes, retirement accounts, savings accounts, education and business. And that is good policy; it is the foundation of the middle class.

However, if you are poor, you have an asset denial policy. There are actually three strikes against you. You cannot take advantage of the income-tax breaks, you face asset limits in public assistance programs and you are more likely to be among the 10 to 20 percent of Americans who are unbanked.

The real question is this: It is not who is willing to work and save. It is whose labor leads to assets and whose labor leads to getting by but never getting ahead. That is the question.

And this is where the Savings for Working Families Act of 2001 comes in. Through a limited tax credit to financial institutions, we can move IDAs from pockets of success to more universal access.

The Savings for Working Families Act addresses the main problem with IDAs: there aren't enough of them. But it does three things in addition to that.

First, it is the next step for welfare reform and community renewal. We have succeeded in moving families from welfare to work. The challenge now is to get them some savings and assets so that they stay out of poverty. It also completes the community renewal process that Congress started last year.

Second, it expands the asset-building system that is already in place. IDAs are not a new poverty program. They are an expansion of the existing asset-building program for people who are willing to work and save.

And third, IDAs lead to greater retirement savings. IDAs help people prepare for retirement in the same way that you and I are—buying a home, going to college, investing in a small business. And we have learned that when low-income people have an IDA, they then buy life insurance, they then open up IRAs, they then start savings accounts for their kids.

To conclude, we were told, when we started talking about this idea 10 years ago, that poor people can't save. Well, we have shown through the 2,400 people in our privately funded demonstration that they can save, and that IDAs work.

I believe that we will always need a stronger safety net, and I hope that it gets strong. But the people who move forward in this economy are the ones who are connected to it, and that connection can come through IDAs.

Thank you.

[The prepared statement of Mr. Boshara follows:]

Statement of Ray Boshara, Policy Director, Corporation for Enterprise Development

Mr. Chairmen, Members of the Subcommittees:

Thank you very much for inviting me to appear before you today. I am honored to be here.

The Corporation for Enterprise Development (CFED) is a non-profit, non-partisan firm committed to widely shared and sustainable economic growth, in particular for low-income families and communities. In our 20 years of existence, CFED has pioneered many innovative and promising strategies, including the creation and expansion of the microenterprise and asset development fields. Through our work, we have enabled families nationwide to participate in the mainstream economy, and to realize their dreams of obtaining good jobs, opening small businesses, going to college, owning a home, and bequeathing a better future for their children. Further information on CFED can be found at our website at www.cfed.org.

I am here today to testify in support of Title III of the Community Solutions Act. Title III is the Savings for Working Families Act of 2001, which proposes a national expansion of Individual Development Accounts, or IDAs, through a tax credit to financial institutions that set-up, match and support IDAs. CFED greatly appreciates your consideration of this important legislation.

I'm pleased that the bi-partisan Savings for Working Families Act of 2001 is included in the Community Solutions Act, and to report that, yesterday, Congressmen Joseph Pitts and Charles Stenholm and Senators Joseph Lieberman and Rick Santorum introduced the Savings for Working Families Act of 2001 as a stand-alone bill. I would also like to recognize and commend my former boss, Congressman Tony Hall, for first bringing the concept of IDAs to Congress back in 1991 as the Chairman of the House Select Committee on Hunger. Finally, I thank Congressman J.C. Watts, as well as many members of the Ways and Means Committee, for their longstanding support of asset building for the poor and IDAs.

As many of you may know, IDAs are emerging as one of the most promising tools to enable low-income American families save, build assets and enter the financial mainstream. IDAs reward the monthly savings of working-poor families who are trying to buy their first home, pay for post-secondary education, or start a small business. This reward or incentive is provided through the use of matching funds that typically come from a variety of private and public sources. Similar to 401(k)s, IDAs make it easier for low-income families to build the financial assets that they need to achieve the American Dream. To further help them move into the economic mainstream, accountholders receive financial education and counseling. Further information on IDAs can be found at www.idanetwork.org.

In this testimony, I shall address three questions:

1. What do we know about assets?
2. What do we know about IDAs?
3. Why should Congress support the Savings for Working Families Act of 2001?

I. What do we know about assets?

We know four things about assets—assets matter; low- and moderate-income people have relatively few assets; public policy plays an important role in determining who gets assets and who doesn't; and asset subsidies are delivered through the tax code via individual asset accounts, which works well for better-off families but not so well to lower-income families.

1. Assets matter. Assets not only provide an economic cushion and enable people to make investments in their futures; assets also provide a psychological orientation—toward the future, about one's children, about having a stake in America—which income alone cannot provide. Michael Sherraden—author of Assets and the Poor—observes that, "Few people have ever spent their way out of poverty. Those

who escape do so through saving and investing for long-term goals." Melvin Oliver and Thomas Shapiro, authors of Black Wealth/White Wealth, state that "Wealth is a particularly important indicator of individual and family access to life chances. . . . It is used to create opportunities, secure a desired stature and standard of living, or pass class status along to one's children." And this is not just theory: Edward Scanlon and Deborah Page-Adams find that there is increasing evidence that assets do in fact have a range of important positive effects on children, families, and neighborhoods.

2. Assets are distributed more unevenly than income in the U.S. Researchers Robert Haveman and Edward Wolff constructed, for the first time, a measure of "asset poverty" and conclude that asset poverty (using a range of definitions) greatly exceeds income poverty. Even using their most "liberal" definition of asset poverty—net worth needed to get by for three months at the poverty level—the asset poverty rate of 25.5 percent is twice that of the income poverty rate of 12.7 percent. Stacie Carney and Bill Gale, in a thorough review of previous research on saving and wealth accumulation among the poor, conclude: "Although researchers are uncertain as to why low-income and disadvantaged households accumulate low levels of assets and what can be done about it, the basic fact of low accumulation cannot be disputed . . . The available data present a unified picture: low-income households accumulate almost nothing." Finally, low levels of assets are a particular problem for African-Americans, Latinos, and children. For example, forty percent of all white children, and 73 percent of all African-American children, grow up in households with zero or negative net financial assets. Their prospects for achieving the good life are, in my view, quite slim.

3. Public policy encourages asset accumulation for some and discourages it for others. In my view, public policy can structure opportunity, or lack thereof. This is true both historically and currently. In fact, using the assets framework, one can discern two distinct social policies in America, and these two policies (combined with lack of institutional arrangements to support asset building among lower-income persons) account for most of the gap in wealth between lower- and higher-income households:

Asset development. For the non-poor, we have an asset development policy. From the Homestead Act and GI Bill of previous years, to $288 billion in annual tax subsidies for individuals to accumulate assets today (especially homes, retirement accounts, small businesses, and higher education) this country has widely—and wisely—supported asset accumulation by households. But these benefits are highly regressive: for example, according to the Joint Committee on Taxation, households with incomes over $50,000 received 91 percent of homeownership tax expenditures and 93 percent of retirement tax expenditures in FY1998.

Asset denial. Low-income and poor families face three barriers in trying to accumulate assets. One, lacking an income tax liability, they cannot take advantage of tax-based opportunities such as mortgage and pension deductions. Two, low-income families seeking public assistance must—as a matter of law—spend down their assets to receive such assistance, and face severe asset limits once on assistance. And three, low-income persons are much more likely than others to be among the 10 to 20 percent of "unbanked" households, thus preventing them from accessing the mainstream financial services that make asset accumulation possible.

4. Increasingly, domestic policies in the U.S. and worldwide use individual asset accounts to allocate asset subsidies and achieve social and economic policy goals. Michael Sherraden observes that social policy is moving away from large programs and towards individual assets accounts, most of them provided through the income tax system. Examples include IRAs, Roth IRAs, 401(k)s, 403(b)s, Super IRAs, Medical Savings Accounts, Individual Training Accounts, and proposals for Children's Savings Accounts. Increasingly, this is how government will deliver benefits to its citizens, since such accounts provide control and flexibility for families in a global economy. However, lacking an income tax liability, low-income families cannot access most of these benefits. IDAs let low-income families participate in this social policy transformation, allowing them to earn public and private matches (provided they have worked and saved first) and then enabling them to make the social policy choice—e.g., financing a home, a business, an education—that best suits them.

II. What do we know about IDAs?

To summarize, IDAs work. The Center for Social Development (CSD) at Washington University in St. Louis—the primary evaluators of IDAs—reported in January that "Data from the American Dream Demonstration suggests that the poor can save and accumulate assets in IDAs."

IDAs were first proposed in 1990 by Michael Sherraden, but the first IDA programs didn't come into being until 1995 in Illinois, Wisconsin, and Indiana. Since

then, IDAs have expanded to nearly every state in the country (only North Dakota, Wyoming and Alaska have, to the best of our knowledge, no IDA activity). Most of the IDA programs are supported by private funding, although state and federal support is increasing.

IDA practice, policy, and demonstrations can be summarized as follows:

IDA Practice: About 10,000 low-income families are saving in IDAs today, all of them through the support of about 300 community-based organizations. IDAs reach a diverse range of disadvantaged people and are implemented by a broad range of non-profits, including churches, credit unions, housing agencies, welfare agencies, workforce development programs, United Ways, and community development corporations. Financial education is provided by these organizations, as well as by others.

IDA Policy: At the federal level, IDAs have been included in existing economic development and safety programs (such as TANF and the Community Reinvestment Act), and two small federal IDA programs have been funded, both at the U.S. Department of Health and Human Services (one in the Office of Community Services, the other at the Office of Refuge Resettlement). IDAs have also been embraced by states: 32 have included IDAs in their TANF plans (although only about half of those actually use TANF funds for IDAs) and 31 states have passed IDA legislation. States are also using CSBG and CDBG funds, as well as tax credits, to expand IDAs.

IDA Demonstration: The most significant source of hard data about IDAs is the Downpayments on the American Dream Policy Demonstration, or "ADD." ADD is a 14-site, privately-funded, 4-year demonstration organized by CFED and CSD. As of June 30, 2000, nearly 2,400 people were participating in ADD, saving for an average of about 13 months in the program. In ADD, 88 percent of the participants had incomes below 200 percent of the federal poverty line.

A full copy of the evaluation report published by CSD can be obtained at http://gwbweb.wustl.edu/Users/csd/, and a copy of the Executive Summary has been included as an appendix to my testimony. Some of the highlights from the report are as follows:

• Average monthly net deposits per participant were $25.42, and average monthly gross deposits were $41.43.

• On average, accountholders saved 2.2 percent of monthly income. Interestingly, the savings rate decreased as income increased: the lowest-income families saved 5.6 percent of their income, while those with the highest incomes saved 1.2 percent of their income.

• The average participant saved about two-thirds of what they could have saved and matched, and made a deposit in 7 of 12 months.

• With an average match rate of 2:1, participants accumulated about $900 per year in IDAs. Matches attract people to IDAs and keep people in IDAs, but higher matches do not seem to lead to greater deposits.

• 13 percent of participants had a matched withdrawal. About 24 percent made a home purchase, 24 percent invested in microenterprise, and 21 percent pursued post-secondary education. The rest used their matched withdrawals for home repair, retirement, or job training.

• The average participant attended 10.5 hours of general financial education. Each hour up to 12 was linked with large monthly deposits, but hours after that had little effect.

Good questions have been raised about how accountholders are saving—what are they giving up to save in an IDA?

While we don't have conclusive evidence yet, we can say that thus far it's primarily through more efficient consumption that accountholders can save: they're eating out less, spending less money on alcohol and tobacco, shopping more carefully for food, and working harder. Also, it has been asked if savings in an IDA represent new savings—is this money that would have been saved anyway? Again, we don't have conclusive evidence yet, but anecdotal evidence is compelling that IDA savings are, in fact, new savings.

When we started doing this work, everyone said "The poor cannot save." Well, our data have shown that they can. We believe this reflects the "institutional" nature of IDAs—that people of any income will save if properly structured and supported. A good example here is the federal Thrift Savings Plan: one could wonder how much federal employees would save if it weren't set-up for them: the match, the information, the automatic payroll deductions, the education about the plan all make it easy and attractive to save in the TSP. It's the same for IDAs.

Finally, let me remark that, to our surprise, the "asset effects" of IDAs (that is, the psychological, civic, and social effects of IDAs) appear to be both sooner and stronger than anticipated. While we will, of course, properly evaluate the

accountholders in our demonstration (including comparing them to a control group), we have been struck by the stories of the accountholders themselves—how much they say IDAs have changed their lives, their childrens' lives, their attitudes about their future. Michael Sherraden has always said, "Income may feed peoples' stomachs, but assets change their heads." Listening to our accountholders, this is turning out to be quite true.

III. Why Should Congress Support the Savings for Working Families Act of 2001?

The Savings for Working Families Act (the "Savings Act") was first introduced in April 1999, then again in early 2000 and, as I mentioned at the beginning of my testimony, was introduced again yesterday as a stand-alone bill. The legislation was passed by the Senate in 1999 as part of the its $792 billion tax bill, but was dropped in conference (the bill was subsequently vetoed by President Clinton). The Savings Act came very close to being enacted in late 2000 as part of the "New Markets Initiative," but was dropped at the very last minute. I am pleased to report that President Bush has included an IDA tax credit in his budget (modeled on the Savings for Working Families Act), following a campaign event he did on IDAs in Dayton, Ohio last year.

Here's how the Savings Act would work. Financial institutions (in partnership with community based organizations) would set-up and support the accounts for qualified individuals, and provide matching funds and financial education. At the end of the year (or quarter), a tax credit could be claimed by the financial institution for matching funds provided (up to $500 per accountholder per year), as well as a couple of smaller tax credits for maintaining and supporting the accounts. I have attached a detailed summary of the legislation in the appendix.

Specifically:

• IDAs would be available to citizens or legal residents of the U.S. between the ages of 18 and 60, and whose federal AGI does not exceed $20,000 (single), $25,000 (head of household), or $40,000 (married). Eligible individuals may use their IDA for the benefit of a spouse or dependent.

• All IDAs must be held at a qualified financial institution, which is any financial institution eligible to hold an IRA. Qualified financial institutions, qualified nonprofits (501(c)(3)s, CDFIs, and credit unions), and Tribes are eligible to run a qualified IDA program.

• Savings from any source will be matched on a 1-1 basis, up to $500 per person per year. Individual contributions into an IDA are not limited. Accountholders do not have access to the matching funds—they're in a separate parallel account that is paid directly to the asset provider when it's time to purchase an approved asset. Both private sector and non-federal public funds could also be contributed to the accounts and matched in accordance with ratios set by the providers.

• Financial institutions (or their contractual affiliates) would be reimbursed for all matching funds provided plus a limited amount of the program and administrative costs incurred (whether directly or through collaborations with other entities). The IDA tax credits are as follows:

  • The aggregate amount of all dollar-for-dollar matches provided (up to $500 per person per year), plus

  • A one-time $100 per account credit for financial education, recruiting, marketing, administration, withdrawals, etc., plus

  • An annual $30 per account credit for the administrative cost of maintaining the account.

• The tax credits are available between the years 2002-2008 for all accounts opened by the end of 2006.

• Individual deposits are after-tax dollars, interest earned on those deposits is taxable, but all matching funds and earnings thereon would be tax-free. Individual deposits, matching funds, and all accrued interest would be disregarded in determining eligibility for other means-tested federal programs.

There are five reasons why, I think, Congress should support the Savings for Working Families Act of 2001:

1. IDAs are the next step for welfare reform and community renewal. Assets are the one piece of the poverty puzzle that has never really been addressed before. Welfare reform has succeeded in moving people from welfare to work, but without savings and assets it will be hard, in my view, for these families to stabilize their lives and make good investments in their children and futures. IDAs also help complete the community renewal process which began last year.

2. Asset building has a long tradition in the U.S., and reinforces basic American values of work, saving, and responsibility. We're not asking Congress do something for the working poor that's not already being done for the middle class. Keep in mind that not one federal dollar is spent until low-income people work and save,

and some private sector dollars are leveraged. IDAs are not a government hand-out, nor are they a new poverty program, but rather a true public-private-citizen partnership, one that expands our successful asset-building system to people willing to work and save.

3. IDAs have strong, bi-partisan support and have been endorsed by a broad range of organizations. Both President Bush and former President Clinton support IDAs, as do a very wide range of Members of Congress. In addition, the Savings Act has been endorsed by the Financial Services Roundtable, United Way of America, Credit Union National Association, National Conference of State Legislatures, National Association of Home Builders, National Congress for Community Economic Development, National Council of La Raza, National Center for Neighborhood Enterprise, and many others.

4. IDAs lead to stronger retirement savings and complement the recently-passed retirement savings credit. For many if not most low-income families, retirement savings is important, but the larger issue is getting to retirement. While the vast majority of IDAs do not offer retirement as a use, IDAs nonetheless help low-income people prepare for their retirement the same way many of us in this room prepare for our retirement: by investing in a home, an education, or a small business. We have compelling anecdotal evidence that once people begin to save in an IDA, they then open up IRAs, buy life insurance, and think more seriously about their children's futures. CFED commends this Congress for including a retirement savings credit in the recently-passed tax bill, but we believe that coupled with IDAs this savings credit will be better utilized.

5. IDAs have been tested and shown to work, but they don't reach enough working poor families. Our Congressional sponsors have said, "Why are we limiting this great idea to demonstration projects?" The main problem with IDAs, they say, is that there aren't enough of them. While nearly 19 million persons are potentially likely to open an IDA under the Savings Act, only 10,000 are presently using them. We will never overcome wealth and opportunity gaps through demonstration projects, and private sector funding needs to be leveraged by public sector funds in order for it to expand. Keep in mind, too, that the credit would be authorized for only five years: at that point, we hope we have made the case that IDAs work, and that this credit is worthy of expansion.

Conclusion

Without assets, poor families are likely to remain poor. And without asset development policies, only very few poor families will have the opportunity, incentive, and institutional supports necessary to save for and acquire productive assets.

Ever since the New Deal, America's public and private sectors have spent billions on the poor in the form of income support, safety nets, rental assistance and transitional aid, but these sectors have rarely invested adequately in the poor, empowered them with assets, enabled them to own a piece of their neighborhoods, or encouraged them to build wealth. Thus, while the U.S. has succeeded in preventing the vast majority of poor families from falling through the bottom, it has failed in offering the asset-building tools necessary to let those families move from the bottom to the middle or top.

IDAs represent a new vision for America's working-poor families: enable them to build assets, not just income; empower them to own, not just owe; view them as savers, producers, and entrepreneurs, not just recipients, borrowers, and trainees. In other words, through opportunities to save and acquire assets, invite low-income working Americans to be participants in the American economy, rather than recipients of its excesses.

In closing, it is important to observe that the entire process of family development, community building, and neighborhood revitalization begins with low-income people themselves—it is their investments in themselves that trigger all the other investments. Nothing happens if nothing is saved; America will realize no returns on its investment in IDAs if poor people will not or cannot first invest in themselves.

With your favorable consideration of Title III of the Community Solutions Act, IDAs can move from reaching a few thousand hard-working families to millions. Mr. Chairmen, members of the subcommittees, thank you for your time. I am pleased to answer any questions you may have.

Savings and Asset Accumulation in Individual Development Accounts

Downpayments on the American Dream Policy Demonstration

A National Demonstration of Individual Development Accounts

[Mark Schreiner, Michael Sherraden, Margaret Clancy, Lissa Johnson, Jami Curley, Michal Grinstein-Weiss, Min Zhan, Sondra Beverly

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Executive Summary

Long-term improvement in well-being requires asset accumulation. While saving is not easy for anyone, it is more difficult for the poor because they have few resources relative to subsistence requirements, because they lack access to some public-policy mechanisms that subsidize saving, and because scarce resources and restricted access may push saving out of their world view.

Individual Development Accounts (IDAs) are a new policy proposal designed to address these constraints and to improve access to savings institutions for the poor. Withdrawals of deposits by the poor in IDAs are matched if used for home ownership, post-secondary education, or microenterprise. Participants also receive financial education and support from IDA staff.

Do IDAs work? Data from the American Dream Demonstration (ADD) suggests that the poor can save and accumulate assets in IDAs:

- Average monthly net deposits per participant were $25.42.
- The average participant saved 67 percent of the monthly savings target.
- The average participant made a deposit in 7 of 12 months.
- With an average match rate of 2:1, participants accumulated about $900 per year in IDAs.

The American Dream Demonstration

ADD is a demonstration of IDAs in 14 programs across the United States. It is scheduled to run for four years (1997–2001), with two more years of evaluation through 2003.

The Corporation for Enterprise Development (CFED) in Washington, D.C., designed ADD and guides it. The Center for Social Development (CSD) at Washington University in St. Louis designed the evaluation.

The evaluation of ADD is the first major study of IDAs. The Startup Evaluation Report (Sherraden et al., 1999), monitored the start-up period through June 30, 1998. Saving Patterns in IDA Programs (Sherraden et al., 2000) covered programs, participants, and saving patterns through June 30, 1999. This report discusses savings and asset accumulation through June 30, 2000. A final monitoring report will cover ADD through December 31, 2001.

Data come from the Management Information System for Individual Development Accounts (MIS IDA), a software package created and supported by CSD. MIS IDA offers tools for program management and evaluation (Johnson, Hinterlong, and Sherraden, 2000). Data in MIS IDA were collected by program staff and may be the best ever assembled on high-frequency saving by the poor. In particular, records of cash flows in IDAs come from bank statements and are very accurate. The report notes carefully possible effects of weaknesses in the data.

A Theory of "Asset Effects"

IDAs aim to do more than just transfer resources to the poor. Of course, resources are good to have, if only because they can be converted into consumption. IDAs, however, expect that its transfers will be saved rather than consumed. But standard welfare transfers can also be saved. How are IDAs different? This report develops Sherraden's (1991) proposed answer in terms of institutional theory. IDAs are packaged in an institutional structure that explicitly asks and expects participants to save their transfers in forms (such as homes, human capital, or business assets) unlikely to be quickly consumed. In contrast, standard welfare is designed to support consumption.

The institutional package matters because people are not the rational, omniscient beings assumed in economic theory. People are subject to suggestion, and they respond to patterns of choices worn smooth by public policy because that takes less effort than to imagine choices and then to weigh possible chances of consequences.

Institutional theory suggests that the structure of IDAs encourages the poor to see saving as an option with positive consequences:

- The existence of IDAs forges a social pattern as it sends the message that the poor can save.
- Matches increase the return on savings, increase asset accumulation from given savings, and attract people to the program.
- IDAs are linked to financial education that provides knowledge of how to save.
- The match cap becomes a goal in the minds of participants.
- Monthly statements give feedback and show progress toward goals. Furthermore, program staff and peers provide informal encouragement. The focus on success makes saving easier.
- IDA programs ask for monthly deposits. This encourages saving to become a habit.
- IDAs give poor people access to a way to commit to save.
- Through budgets, goals, and plans, IDAs focus on the future and increase future orientation.
- IDAs point out goals (such as home ownership or post-secondary education) that people might not see (or see as worthwhile) on their own.
- Informal discouragement of unmatched withdrawals helps to curb dissaving.

Sherraden (1991) introduced the concept of asset effects, defined as the impacts of ownership. Humans are forward-looking, and current well-being depends in part on expected future well-being. People with more assets in the present expect to have more resources in the future. Thus—for purely economic reasons—they expect to be happier. "Asset effects" occur when ownership improves expected future well-being and thus, for psychological reasons, improves current well-being. Not only do owners think differently, but others also treat them differently. The social and political effects of ownership may matter even more than the individual effects.

Participation in ADD

Enrollment. A participant is defined as someone who enrolled in ADD and who had an account statement in MIS IDA. As of June 30, 2000, ADD had 2,378 participants in 14 IDA programs.

Graduation. About 13 percent of participants had taken a matched withdrawal. A fourth of these "graduated" and left the program, and three-fourths are still active.

Exit. About 16 percent of participants had exited without a matched withdrawal. The cumulative risk of exit in the first 12 months was 11 percent, and it was 16 percent for the first 24 months. As of June 30, 2000, 81 percent of participants were active. These and other outcomes will change with time.

Savings Outcomes in ADD

Gross deposits. The average participant had participated for 13.3 months and had gross deposits of $41.43 per month ($552 total).

Unmatched withdrawals. The size and frequency of unmatched withdrawals has been one of the biggest surprises in ADD. About 37 percent of participants made unmatched withdrawals from matchable balances, removing 25 percent of all matchable deposits. For participants who made unmatched withdrawals, the average number was 2.9, and the amount removed was $320. With an average match rate of 2:1, this implies a loss of potential matches for people who make unmatched withdrawals from matchable balances of about $640. The high opportunity cost of unmatched withdrawals, coupled with their size and frequency, highlights the difficulty of asset accumulation for the poor, even in the supportive institutional context of IDAs.

Net deposits. Net deposits are defined as gross deposits minus unmatched withdrawals minus balances in excess of the match cap. Aggregate net deposits in ADD were $838,443. Net deposits per participant were $353 ($420 for non-exits). The average monthly net deposit (AMND)—defined as net deposits divided by months of participation—was $25.42 (for non-exits, $30.30). Median AMND was $17.96 ($23.35 for non-exits). With an average match rate of 2:1, the average participant in ADD had accumulated about $75 per month.

The average match rate per dollar of net deposits was 1.96:1, and the match that corresponded to net deposits was $1,644,508. If all net deposits were used in matched withdrawals, total asset accumulation in IDAs would be $2,482,951. With exits included, this is $1,044 per participant; with exits excluded, it is $1,245 per participant. These figures will change as ADD progresses.

Matched withdrawals. Aggregate matched withdrawals in ADD through June 30, 2000 were $191,601. The average match rate per dollar of matched withdrawals was 1.82:1, and matches disbursed were $348,373. The average participant with a

matched withdrawal had 2.0 withdrawals for a total of $603. Their total asset accumulation averaged $1,698.

Matched withdrawals became more common as balances were built through time; 9 percent of participants had a matched withdrawal by their 12th month, and 27 percent had one by their 24th month.

Matched uses. As of June 30, 2000, 13 percent of participants had a matched withdrawal. About 24 percent made a home purchase, 24 percent invested in microenterprise, and 21 percent pursued post-secondary education. The rest used their matched withdrawals for home repair, retirement, or job training.

About 87 percent of participants had no matched withdrawals. Of these, 57 percent intended to buy a home, 18 percent intended to spend on microenterprise, and 15 percent planned for post-secondary education. About 10 percent planned for home repair, retirement, or job training.

Net deposits as a percentage of the pro-rated match cap. On average, participants had net deposits of 67 percent of the monthly savings target (median 49 percent). At this pace, they will use two-thirds of their total match eligibility.

Deposit frequency. On average and at the median, participants made a deposit in 7.0 months per year. Non-exits made a deposit in 7.6 months per year. Some evidence suggests that frequent depositors accumulate more than infrequent depositors.

Savings rate. On average, AMND was 2.2 percent of monthly income (median 1.3 percent). The savings rate decreased as income increased. Perhaps the institutional effects of IDAs are stronger than the economic effects of greater income, and perhaps these institutional effects are somehow stronger for poorer people.

IDAs and EITC. Net deposits increased markedly in tax season. IDA participants save some chunk of tax refunds or payments from the Earned Income Tax Credit.

Costs

Policy choices require data on both outputs and costs. Cost data in MIS IDA are measured with error and are probably overstated for many reasons (for example, due to start-up costs, provision of technical assistance to other IDA programs, and data collection for the evaluation of ADD). Average program expenses (without matches) were $70.38 per participant-month, or $2.77 per $1 of net deposits. A study of the first 14 months of the experimental-design program in ADD also found costs in this range (Schreiner, 2000a). Costs in ADD did decrease with time. Average program expenses per participant-month through June 30, 1999, were $117.58; in the next 12 months, they averaged $43.06.

With a 2:1 match, total outlays in IDAs were thus roughly $6 per $1 of net deposits ($1 savings, $2 match, and $3 program expenses). This is about $2 of total outlay per $1 of asset accumulation.

Are these costs high or low? The answer depends on the as-yet-unmeasured benefits of IDAs. A standard financial benefit-cost analysis is planned for the site of the experimental design (Schreiner, 2000b). Even without precise knowledge of benefits, however, measurement of costs highlights trade-offs and sets a benchmark that encourages efficiency.

Qualitative evidence from the evaluation of ADD suggests that participants believe that intensive service is a key element of program design. A key challenge for IDA programs is then to provide such services in such a way that benefits can exceed costs. The tension between intensive service and cost structures that would allow broad access to IDAs may lead to two tiers of IDA designs, one with fewer services, lower costs, and broader outreach, and another with greater services, higher costs, and narrower targets (Sherraden, 2000).

New Savings versus Shifted Assets

IDA deposits can come from new savings or from assets converted from other forms. Even if the poor (or the non-poor) do not explicitly shift liquid assets, they can implicitly shift illiquid assets if IDAs lead to reduced investment and maintenance in non-IDA assets. High returns on IDAs may also lead savers to borrow or to repay debts slower than otherwise.

Qualitative evidence from the evaluation of ADD (Moore et al., 2001 and 2000) suggests that IDA deposits came in some unknown measure from both new savings and from shifted assets.

Program Characteristics and Savings Outcomes

The association between program (institutional) characteristics and savings outcomes matters because policy can affect program design. The results below are derived from multivariate regressions that control for a wide range of program and participant characteristics.

Match rates. A central feature of IDAs is the match rate. In regressions, higher match rates have large, strong associations with reduced risk of unmatched withdrawals and with reduced risk of exit. Match rates do not, however, have a statistically significant link with AMND.

Qualitative evidence suggests that matches attract people to IDAs; quantitative evidence here suggests that higher match rates keep people in IDAs and encourage them to maintain their balances. But higher match rates do not seem to lead to greater deposits. We believe that these estimated associations result mostly from institutional factors, but economic factors, two-way causation, and censored data also matter to some unknown extent. The data from ADD do not allow a sharp test of the effect of match rates on savings outcomes.

Monthly savings target. The monthly savings target is the amount that, if saved each month and not removed in unmatched withdrawals, would produce net deposits equal to the total match cap. On average in ADD, AMND was 67 percent of the savings target.

Higher savings targets were strongly linked with large reductions in the risk of unmatched withdrawals and the risk of exit. Higher savings targets were also strongly linked with higher AMND.

At least three forces may drive this. First, participants may change match caps into goals, leading to greater savings effort when match caps are higher. Second, AMND is cut-off for participants at the match cap. Third, programs may have assigned higher targets to groups expected to be high savers. These last two factors may induce a spurious positive correlation between the match cap and savings.

Financial education. Required financial education is a central feature of IDAs in ADD. The average participant attended 10.5 hours of general financial education. Each hour up to 12 was linked with large increases in AMND, but hours after that had little effect.

In broad terms, AMND increases with financial education (whether general or asset-specific), but only up to a point, probably somewhere between 6 and 12 hours. The content of classes probably also matters, but we did not measure it.

Participant Characteristics and Savings Outcomes

Participants in ADD are not a random sample of people eligible for IDAs; they are program-selected and self-selected. Programs target certain people, and eligibles in the target group who expect the greatest net benefits are the most likely to enroll. Results in this report pertain only to eligibles who, if they had the choice, would enroll in IDAs.

Compared with the overall U.S. population at or below 200 percent of the poverty line, IDA participants are more disadvantaged in that they are more likely to be female, African-American, or never-married. IDA participants are less disadvantaged, however, in that they are more educated, more likely to be employed, and more likely to have a bank account. These patterns likely reflect the explicit targeting of the "working poor" by programs in ADD and the client base of the host organizations.

Gender. About 80 percent of participants were female. Gender had no link with savings.

Race/ethnicity. About 47 percent of participants in ADD were African-American, 37 percent were Caucasian, 9 percent Hispanic, 3 percent Native American, 2 percent Asian-American, and 3 percent "Other." Although average AMND for all groups was at least $19.50, differences between groups were large. For example, compared with Asian Americans, average AMND was $10.58 less for "Other," $11.62 less for Hispanics, $12.77 less for Caucasians, $20.82 less for African Americans, and $22.30 less for Native Americans.

These differences are not due to race/ethnicity per se but rather to a constellation of socially produced characteristics correlated with both race/ethnicity and savings. In a perfect model that controlled for everything, the estimated link between race/ethnicity and savings would be zero.

IDAs aim to increase inclusion in institutions for saving and asset accumulation. We do not know whether IDAs increase saving or whether they increase saving more for disadvantaged groups. Although IDAs in ADD did narrow relative racial/ethnic gaps, they are not a panacea.

Education and employment. Given their income, participants in ADD were highly educated: 24 percent had a college degree of some sort, and 85 percent completed high school. Education was not linked with the risk of exit. AMND was highest for people with 4-year college degrees.

Participants in ADD also had a high incidence of employment: 78 percent worked full-time or part-time. Employment status was not significantly associated with any savings outcomes.

Receipt of public assistance. About 50 percent of participants in ADD had received some form of public assistance at enrollment or before. Current receipt of public assistance was not associated with any savings outcomes.

Income. Mean income/poverty in ADD was 111 percent (median 100 percent). About 21 percent were under 50 percent of the poverty line, and 12 percent were over 200 percent of the poverty line. The level of income was not associated with the risk of an unmatched withdrawal, the risk of exit, or AMND, but higher income was associated with a lower savings rate. Possible explanations include institutional factors, censored data, and measurement error, but we believe that institutional factors matter most and that they may be strongest for the poorest.

Insurance coverage. About 51 percent of participants in ADD had health insurance, and 31 percent had life insurance. Health insurance did not have a significant association with exit, unmatched withdrawals, or AMND. Life insurance was not associated with AMND, but it was correlated with reduced risk of exit and of unmatched withdrawals.

Asset ownership. Participants who owned assets likely had unobserved characteristics that predisposed them to save more in IDAs. For example, participants with a checking account were much less likely to exit, they were much less likely to take an unmatched withdrawal, and they had much higher average AMND. The same pattern holds for home owners and car owners.

Summary

These mid-way results from ADD will raise questions, spark debate, and inform policy. The goal of this discussion and of future research—in ADD and elsewhere—is to build knowledge about how programs that aim to encourage saving and asset accumulation can be more inclusive and generate greater net benefits.

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The Savings for Working Families Act of 2001

Included in H.R. 7 and S. 592

Provision	Language
Eligibility (qualified individuals).	—AGI cannot exceed $20,000 (single), $25,000 (head of household), or $40,000 (married) —Based on prior year's federal tax return. —Citizens and legal residents of the U.S. ages 18 through 60, except students. —Accountholder can pay qualified expenses of spouse or dependent.
Allowable uses (qualified expenses).	—First home purchase. —Small business capitalization or expansion. —Post-secondary education and vocational training.
Matching funds	—IDA savings matched on a 1-1 basis, up to $500 per year. —State, local and private sector sources may contribute matching funds to the accounts in accordance with their own matching ratios.
Federal tax credit	—Qualified financial institutions (those that can hold an IRA) would be eligible for a tax credit for the aggregate amount of all matching funds provided, plus a one-time $100 credit per account opened plus an annual $30 credit per account to maintain the account. The $100 credit is meant to cover financial education, recruitment, marketing, withdrawals, administration, etc. —The tax credit may be taken by the qualified financial institution or its "contractual affiliate." This means that the for- or non-profit qualified financial institution can partner with an entity to take the tax credits on behalf of the financial institution. For example, a credit union may contract with a for-profit affiliate with that affiliate taking the tax credits on behalf of the (tax-exempt) credit union. Similarly, to reduce various costs, a for-profit financial institution may form an umbrella for-profit consortium to take tax credits on behalf of its members.
Sources and limits on individual deposits into accounts.	—No limits or restrictions on deposits: if one is eligible based on prior year's AGI, then any deposit will be considered valid, whether from earned income, disability payments, gifts, etc.
Federal tax treatment of accounts.	—Individual deposits already after-tax. —Interest on individual deposits taxable. —All matching funds and interest not taxable at time of deposit or for qualified expenses.
Penalties for withdrawal of individuals' own savings.	—No penalty, but accountholder loses corresponding matching funds unless withdrawn amount is paid back by September 30 following withdrawal.
Role of non-profits and Tribes.	—Qualified non-profits are expected to run IDA programs; qualified non-profits include 501(c)(3)s, CDFIs, and credit unions. —Tribes may run their own programs. —Qualified financial institutions may also collaborate with other "contractual affiliates" to carry out the program.
Role of financial institutions.	—Qualified financial institutions are those that offer IRAs. —Financial institutions will hold all accounts and matching funds.
Financial education training.	—Required before asset can be purchased but with waivers for "hardship" and "lack of need."
How asset purchased	—Funds paid directly from both accounts (individual and match accounts) to asset provider, upon approval of financial institution, non-profit organization, or Tribe.
Legal structure of the account.	—Individual's savings: account owned solely by the eligible individual. —Matching funds: kept in separate, parallel account owned by qualified financial institution, non-profit, or Tribe.
Program certification	—Qualified non-profits and financial institutions must meet quality standards for their IDA program as specified by the Secretary.
Effect on mean-tested federal programs.	—All funds (individual savings, matches, and earnings) disregarded in determining eligibility for means-tested federal programs (e.g., Food Stamps, Medicaid, SSI, etc.).
Administering agency	—Treasury Department.

Provision	Language
Reporting and evaluation.	—All qualified non-profits and financial institutions must participate in regular monitoring and reporting. —Secretary will establish an evaluation protocol to assess costs and outcomes.
Applicable years	—For all accounts opened within 5 years (2002-2006), matching funds will be available through 2008. No new accounts can be opened after 2006.

Chairman MCCRERY. Thank you, Mr. Boshara.
Ms. Aviv.

STATEMENT OF DIANA AVIV, VICE PRESIDENT FOR PUBLIC POLICY, UNITED JEWISH COMMUNITIES

Ms. AVIV. Good afternoon, Mr. Chairman and distinguished Subcommittee members. Thank you very much for the opportunity to present our views today.

The United Jewish Communities (UJC) is a faith-based charity that represents 189 local Jewish federations, 400 independent communities across North America. We are the largest Jewish philanthropy in the world, raising several billion dollars of private funds each year, and represent a significant network of social service providers.

Our federations assist and fund people in need through hundreds of health and welfare agencies serving more than 1 million clients each year. This work is at the heart of our mission and is fundamental to our religious obligation to serve the poor.

People give to charity because they think it is the right thing to do. Our experience also informs us that they give more generously when presented with tax incentives. For this reason, we are pleased to support H.R. 7's IRA charitable rollover and the nonitemizer deduction.

Since the purpose of these provisions is to spur greater charitable giving, the offsets used to pay for these measures should *not* come from the very funds designed to serve the same mission of helping those at risk and in need. Investment by government in helping people in need remains the single most important function that government can perform to enable people to help themselves and their families.

These tax incentives should not become entangled with the problematic provisions contained in this legislation. Therefore, we urge you to consider splitting off the charitable incentive provisions from the rest of the bill.

UJC has several other serious concerns with H.R. 7 that we would like to illuminate today.

As you know, this bill would enable houses of worship to compete for public funding on an equal basis with social service agencies without requiring them to incorporate separately. Yet, to protect houses of worship from undue government interference, these religious providers, whose primary purpose is the expression of their religious beliefs, may seek waivers to exempt them from having to comply with the same regulations that govern nonprofit agencies.

Such standards may include accreditation; counselor-client ratios; nutrition requirements; health, safety, and fire standards. Service providers who are not required to meet the same basic standards of quality in care will be able to provide services at a lower cost. This would result in unfair competition and could drive many legitimate organizations out of business.

Given its inability to monitor such programs, government may be exposed to greater potential fraud and abuse.

While H.R. 7 provides for religious organizations to be subject to the same regulations as nongovernment organizations, regarding accepted accounting principles, there is no requirement that faith-based recipients of public funds would need to comply with any other standards or regulations. The bill is silent on the applicability of national and local standards and regulations, and this ought to be remedied posthaste.

We are also deeply concerned that this legislation does not adequately protect clients who have no wish to partake in religiously related programming, and who might feel coerced to participate. There is nothing in the bill that prohibits providers from holding prayer meetings immediately before and after government-funded services, as long as the religious activities are funded privately. The client is not necessarily aware of what portion of the program is funded with public dollars.

As a social worker, who has spent years working with vulnerable populations, I can attest that the vast majority of clients do not have the wherewithal to insist upon their right not to be placed in potentially coercive environments. It is easier for many not to seek help in the first place, with the result that their health and welfare may be jeopardized.

The provision in H.R. 7 concerning this issue leaves the responsibility of objecting to the religious character of the organization up to the client after he or she has sought assistance. Only then would the government be required to provide an alternative service within a reasonable period of time.

Our tax dollars should fund viable secular alternatives in advance and not leave this burden to the client.

The proponents of faith-based programs acknowledge that there is no evidence that religious programs produce better results than the existing network of services. We think that the responsible thing to do is to test the program first for effectiveness and iron out the religious entanglements before embarking upon wholesale government reengineering of such massive proportions.

One of the major reasons that many houses of worship have not been able to create their own separate organizations is because they do not have the capacity to do so. The solution, though, is not to waive existing standards but to provide funds for capacity building. H.R. 7 ought to include grants to facilitate this.

In conclusion, there are many successful ways that government can partner with faith organizations in working toward our common goal of assisting people in need without running afoul of the Constitution. This includes technical assistance, research, information dissemination, and capacity building.

We strongly support such partnerships and will continue to fund privately programs and services that are so important to communities of faith.

[The prepared statement of Ms. Aviv follows:]

Statement of Diana Aviv, Vice President for Public Policy, United Jewish Communities

Good morning Chairmen Herger and McCrery, Congressmen Cardin and McNulty, and distinguished Subcommittee members. I am Diana Aviv, Vice President for Public Policy for the United Jewish Communities and I thank you for the opportunity to present United Jewish Community's views on House Bill 7. The range of issues raised by this legislation is of profound importance to the local communities that I represent here today.

United Jewish Communities [UJC] is a faith based charity that represents 189 local Jewish Federations, and 400 hundred independent communities, in 800 localities across North America. We are the largest Jewish philanthropy in the world, raising several billion dollars of private funds each year, and represent a significant network of service providers. Our Federations help to plan, coordinate, and fund services to people in need, through 18 hospitals, 160 skilled nursing facilities, 100 HUD-financed Section 202 facilities, 200 independent living facilities, 160 family service and job training agencies, and hundreds of other programs serving more than 1 million clients each year. This work is a core to the mission of our organization, our traditions, and is fundamental to our religious obligation to serve the poor through charity, acts of loving kindness and repair of the world. Toward this end we have created a network of social services that offer assistance to people at every stage of their lives and in all moments of need.

For over a century, the Federation system has engaged in such philanthropic efforts and has partnered with national and local governments to ensure that the needs of America's most vulnerable people do not go unmet. Over the decades, we have successfully discharged our religious obligations as a faith based charity, while at the same time have worked within a structural framework that respected the constitutional separation of church and state.

Mr. Chairmen and distinguished committee members, we want to take this opportunity to express our appreciation to President Bush for his statements early in his term, on the importance of the charitable sector, community-based organizations and government's vital support of their work. We also appreciate the President's expressed concern about not violating the constitutional separation of church and state and the need to have viable secular alternatives for those individuals not wishing to receive services from a faith based charity. Certainly the President's interest in this subject has generated a new round of discussion around the nation about the scope of the relationship between the religious sector and government. We welcome that conversation.

People give to charity because they think it is the right thing to do, because of their religious beliefs and because of personal imperatives. Our experience also informs us that they give more generously when presented with tax incentives for charitable giving. One of the most important ways that government can assist charities is through tax incentives that may lead to greater generosity by donors. This approach, of course, is not intended to replace the vital obligations of the public sector to make available adequate levels of funding to meets the needs of vulnerable Americans. The basic investment by government, in helping people in need through its funding of social service initiatives, remains the single most important function that government performs to address human suffering and to enable people to help themselves and their families. There are other ways that will further assist charities and we believe that the provisions in H.R. 7 pertaining to charitable giving represent such constructive opportunities. In particular we note support of the IRA charitable rollover and the non-itemizer charitable deduction. Since their purpose is to spur greater charitable giving to assist charities in furthering their missions, the offsets used to pay for these measures should not come from the very funds intended to serve the same mission of helping those at risk and in need.

These are important provisions that should stand on their own and not become entangled in many of the problematic provisions also contained in this legislation. We urge you to consider splitting off the charitable incentive provisions from the rest of the Bill, as the Senate has decided to do. In this way your commitments to provisions that enjoy wide support on a bipartisan basis and that help charities with their fund raising efforts, will be realized.

United Jewish Communities has two major concerns regarding the expansion of Charitable Choice included as Title II of House Bill 7 that we would like to discuss with you today. The first relates to quality control and the second to religious coercion creeping into the delivery of services.

House Bill 7, as you know, would enable houses of worship to compete for public funding on an equal basis with social service agencies without requiring them to incorporate separately. Yet to protect houses of worship from undue government interference, these churches, synagogues and mosques, whose primary purpose is the expression of their religious beliefs, may seek local, state or federal waivers to exempt them from having to comply with the same standards and regulations that govern 501(c) (3) agencies. Such standards may include accreditation, counselor-client ratios, health, safety, and fire standards, and nutrition requirements, among others. These are standards that we have created over the years insure that our tax dollars are spent in ways that meets basic standards of decency, efficiency, and effectiveness. We expect institutions that receive public funds to be accountable for the way they spend those dollars and we need adequate oversight to ensure that such standards are maintained. Maintaining such standards costs money. Providers, who are not required to meet the same basic standards of quality and care designed to protect the client, would be able to provide services at a lower cost. This inevitably would result in unfair competition that could drive many legitimate, high quality 501(c)(3) organizations out of business. Having different standards for some providers may also expose the government to a greater potential for fraud and abuse, given its inability to monitor such programs.

Since the purpose of such legislation is to provide improved, effective service to people, a level playing field in which all charities must apply on the same basis for funds and be subject to the same standards of accountability, is essential to ensure ongoing public confidence. The inability of government to exercise oversight could result in some unscrupulous providers hiding behind the cover of such waivers. This could jeopardize the health and safety of the client and further erode the confidence of the public in government's ability to discharge its obligations in a fair, accountable and responsible way.

While House Bill 7 in Section 201 (h) states that religious organizations "shall be subject to the same regulations as other non-governmental organizations to account in accord with generally accepted accounting principles for the use of such funds," there is no requirement that faith-based recipients of public funds would need to comply with **any other** standards and regulations required of not-for-profit service providers. In fact, House Bill 7 is silent on the applicability of federal, state, and local, standards and regulations, and this ought to be remedied post haste.

We also are deeply concerned that this legislation does not adequately protect clients who have no wish to partake in religiously related programming and who might feel coerced to accept such programming. There is nothing in the Bill that prohibits providers from holding prayer meetings immediately before and at the conclusion of the government funded service in the very same space as the prayer service, as long as the prayers or other religious activities are funded privately. The client is not necessarily aware what portion of the program is funded with public dollars and what portion is private. To them it is a continuous service.

Distinguished Members, as a social worker who has spent years working directly with vulnerable populations, I can attest that the vast majority of clients do not have the self confidence, knowledge and wherewithal to insist upon their right not to be placed in potentially coercive environments. Their lives are stressed enough to begin with, without having the burden of informing the service provider which element of the program is unacceptable to them. It is easier not to seek the help in the first place with the result that clients' health and welfare may be jeopardized.

As a minority religion, we worry about the absence of viable and effective oversight to ensure that overzealous religious providers do not use prayer and religious instruction in counseling and other services with unwilling and highly vulnerable recipients. Vulnerable people should not forced to deal with potentially coercive religious experiences through government funded services and should not have the burden placed on them, of objecting to such programming.

The provision in House Bill 7, Section 202 (f) that addresses this issue does not provide sufficient protection. The provision leaves the responsibility of objecting to the religious character of the organization up to the client, **after** s/he has sought assistance. Only then the government entity would be required to provide an alternative service within a reasonable period of time. Our tax dollars should fund viable secular alternatives **in advance**, and not leave this burden to the client seeking help. Since virtually no new funds have been included in the budget for these programs, it is unlikely that all communities will have a secular alternative program on every "northeast corner" for every religious program located on the "northwest

corner". Even in major cities, given the pressures on local budgets, it does not seem likely that viable secular alternatives will be readily available to clients seeking such service.

Switching currently designated public funds from one group to another, even without all the potential constitutional entanglements, will not necessarily result in more successful service to a larger number of people. The proponents of faith based programs are the very first to say that there is no evidence whatsoever that religious programs produce better results than the existing network of services. Nor does the scholar, Raam Cnaan, on whose work the Professor DiIulio has based his judgments. There is virtually no comparative scholarly evidence to support such claims. While a number of studies do show a connection between church attendance and lower incidence of arrest, substance abuse and ongoing employment, there is no correlation between the effectiveness of services provided by these religious institutions versus their secular counterparts. We think that the responsible thing to do is to test the programs first for effectiveness and to iron out all the religious entanglements before embarking upon wholesale government re-engineering of such massive proportions.

We believe that one of the major reasons that so many individual houses of worship have not been able to create their own separate 501(c)(3) organizations is because they simply do not have the capacity to do so. Our own service providers have had the benefit of our local Federations who serve as intermediaries, providing planning, technical assistance, seed and capital development grants and other infrastructure assistance. They also have had the benefit of a skilled national system that can connect them with other agencies in all parts of the country to learn from and share resources with.

Many of the 350,000 churches, synagogues and mosques have only between 200-400 congregational members and do not have the resources to create separate institutions or to comply with local, state and federal standards of service delivery. The answer is not to lower or waive the standards, but to provide funds for capacity building and infrastructure development so that these institutions may fairly compete with others, on the same basis for public funding and without violating the Establishment Clause. House Bill 7 ought to include such grants to build the institutions locally and strengthen their linkages with other similar providers.

In conclusion, there are many successful ways that Government can and should partner with faith-based organizations, in working towards our common goal of assisting people in need. For the better part of a decade the Department of Housing and Urban Development (HUD) has worked with religious organizations to provide technical assistance, information dissemination, capacity building and a voice with the Secretary of HUD. Additionally, for many years we have been part of a government partnership with religious based charities though FEMA's Emergency Food and Shelter program where the Salvation Army, Catholic Charities USA, United Church of Christ, American Red Cross, United Way of America and the United Jewish Communities have overseen and distributed funds to local food pantries and soup kitchens that serve our most vulnerable populations. We have strongly supported such partnerships and continue to fund and encourage others in the private sector to fund religious programs and services that are so important to communities of faith.

Thank you very much. I will be very pleased to answer any questions you may have.

Chairman MCCRERY. Thank you, Ms. Aviv.

Ms. Meiklejohn.

STATEMENT OF NANINE MEIKLEJOHN, LEGISLATIVE AFFAIRS SPECIALIST, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

Ms. MEIKLEJOHN. Thank you, Chairman McCrery and Chairman Herger.

My name is Nanine Meiklejohn. I am a legislative representative at the American Federation of State, County and Municipal Employees (AFSCME).

Our legislative director, Charles Loveless, had very much hoped to present this testimony, but he had to leave because his father quite ill. We appreciate your accommodating us by allowing me to appear in his place.

We also appreciate the opportunity for the AFSCME to present this testimony.

Let me start by emphasizing that AFSCME values the good work of religious organizations, and we support finding ways to encourage their good work.

We work closely with organizations such as Catholic Charities and Lutheran Social Services in forging public and nonprofit coalitions to address our Nation's unmet social needs.

To really understand H.R. 7, the bill has to be put in the overall context of current budget and tax policies, which envision fewer resources for many social service programs over the next decade.

While we take no position on the merits of the tax provisions in H.R. 7, we are concerned that without offsets the cost could explode over the next 10 years.

The administration's budget cuts many of the programs to which H.R. 7 would apply charitable choice. While tax incentives can help charities augment publicly funded programs, they can in no way replace these nationwide systems. The resulting spending cuts will undermine these systems by shortchanging public and nonprofit agencies, including those currently run by religiously affiliated charities.

Supporters of H.R. 7 contend that the charitable choice provisions are necessary to end discrimination against sectarian organizations in the awarding of government grants. We would submit that the reality is that no such discrimination exists. We all know that various religious organizations receive funds through separate secular nonprofit entities. And small organizations—both secular and sectarian—face the same challenges applying for government money and adhering to government requirements.

In fact, we submit that H.R. 7 actually gives preferential treatment to sectarian groups. This is because the measure allows them, as publicly funded government grantees, to retain certain exemptions that they enjoy in recognition of the fact the religious speech and practice are protected.

These include exemptions from key Federal labor laws that give unemployed workers unemployment benefits and that give all private sector workers the right to organized representation in the workplace. They also include civil rights law that prohibits religious-based employment discrimination.

But H.R. 7 goes even further by giving sectarian organizations unique standing to file a lawsuit against public officials if they believe they have been denied a grant on the basis of their religious character. No other grant applicant has a similar right to challenge a grant or contract award.

This goes well beyond leveling the playingfield and will undermine longstanding State and local government contracting practices that are designed to ensure the selection of the most competent and effective providers. Public officials will be placed in the no-win situation of selecting among different religions and between

secular and sectarian applicants. Religion could take precedence over experience and expertise.

We believe, as Congressman Scott said, that H.R. 7 does intend to fund the faith. Otherwise, there can be no logical explanation for the secular alternative requirement in H.R. 7.

However, there appears to us to be no meaningful way to ensure that a secular alternative is available in all cases. As a result, some very real dilemmas could arise.

For example, welfare recipients are subject to strict work requirements. If the only available and conveniently located program is a sectarian program with which the individual is uncomfortable, will he or she be sanctioned for refusing to participate?

Charitable choice attempts to mix government and religion, even though they are fundamentally different. Maintaining the independence of religious institutions is precisely what has protected the spiritual integrity of houses of worship and our religious freedom. But government needs to be accountable to taxpayers and voters. It cannot simply contribute to the collection plate.

Taxpayers quite rightly expect a proper accounting for their tax dollars through provisions of law such as performance standards, licensing rules, auditing requirements, due process, and conflict of interest requirements.

We believe that both the citizens and religion are best protected when government and religion are kept separate. The bill does not, because it cannot, reconcile the two in a satisfactory way.

While at first glance charitable choice seems to be an idea with strong appeal, the more you consider it, the more problematic it becomes. We urge you to reject it.

Thank you.

[The prepared statement of Ms. Meiklejohn follows:]

Statement of Nanine Meiklejohn, Legislative Affairs Specialist, Department of Legislation, American Federation of State, County and Municipal Employees

Mr. Chairman, my name is Nanine Meiklejohn, Legislative Affairs Specialist, Department of Legislation, at the American Federation of State, County and Municipal Employees (AFSCME). AFSCME represents 1.3 million employees who work for federal, state and local governments, health care institutions, and nonprofit agencies. We appreciate the opportunity to testify on H.R. 7, the Community Solutions Act, and in particular, on the charitable choice provisions in the bill.

AFSCME supports and values the good work of religious organizations, especially the current partnerships which government maintains with faith-based organizations through secular religiously-affiliated nonprofit organizations, such as Catholic Charities and United Jewish Federations. Our own members are active in their congregations and in their communities. They are no strangers to the pressing needs of vulnerable individuals and poor communities. Indeed, hundreds of thousands of them work day in and day out in these neighborhoods, and they do so in the face of steady criticism from public officials who seek political advantage by condemning government while depriving public agencies of the resources and leadership necessary to provide quality services.

AFSCME strongly believes, however, that charitable choice is the wrong way to do right. We do not believe that charitable choice is good for religion or for the government-supported social services infrastructure that originally began in the 1930s as private charities were overwhelmed by the Great Depression. Already charitable choice has opened up divisions in our society based on religious differences and prejudices. It has distracted attention from the real issue of providing adequate resources to address the problems of poverty. It will permit religious discrimination in taxpayer-funded programs and has the effect of removing employees in federally-funded programs from several key labor and benefit protections. It will spawn litiga-

tion that will put state and local officials in an untenable political and legal position.

H.R. 7 cannot be judged adequately without considering the Administration's overall budget and tax policies, which envisions far fewer resources for many of the federal programs operated by public and non-profit agencies that assist poor neighborhoods and families. We take no position on the merits of the five tax relief provisions in H.R. 7. However, we are very concerned that, without tax offsets, the $100 billion 10-year cost will contribute further to an erosion of the government-funded social services system.

The Administration appears committed to shifting social services policy away from direct spending to tax credits and deductions. Its proposal to allow Temporary Assistance for Needy Families (TANF) funds to be used to reimburse states for revenue losses attributable to a state tax credit for donations to "qualified" charities most graphically demonstrates this point. It explicitly converts a program of direct spending to public and private agencies into tax cuts for private charities.

The difference between direct spending and tax incentives is profound. The first uses the superior capacity of the federal government to maintain a comprehensive infrastructure. The second depends on the uncertain actions of private individuals and organizations, who are least able to give when times are bad. The likelihood that the resources of state and local governments and private charities will be overwhelmed when times are bad is great.

When charitable choice is combined with the Administration's budget and tax plan, it will pit religious, secular nonprofit and public agencies against each other for a declining share of federal funds and will divert taxpayer funds away from public agencies and current nonprofit providers. It will create the false illusion of "doing more with less."

Charitable choice advocates contend that the bill is needed to change current policies that discriminate against faith-based organizations in the awarding of government grants. In fact, there is no discrimination. Many religious organizations receive funds through separate secular nonprofit organizations, and many small community-based organizations face the same administrative obstacles applying for funds as do small churches.

In fact, charitable choice actually would give preferential treatment to sectarian organizations. Under H.R. 7, houses of worship could retain certain exemptions to rules that all other grantees must follow even though they too would be government grantees providing publicly-funded services.

The charitable choice provisions in H.R. 7 allow houses of worship to retain special exemptions from federal civil rights and worker protection rules in recognition of the fact that religious speech and practice are different. Under current law, houses of worship can base their hiring and personnel policies on the tenants of their faith. As a result, they can refuse to hire or take adverse action against individuals because of their religion or because of personal behavior, such as sexual preference or contraceptive practices, that does not comport with their religious beliefs. From our perspective, this means that experienced and qualified employees of public agencies who lose their jobs will not be eligible for employment with a sectarian-based organization if they practice the "wrong" religion.

In addition, the effect of charitable choice is to expand to government-funded programs certain exemptions from worker protection laws. Federal court and National Labor Relations Board (NLRB) cases show that if entities promulgate, propagate, or indoctrinate a religious faith, they would not come under the jurisdiction of the NLRB and their workers could not organize and bargain collectively. Federal law also exempts employees of churches from the unemployment insurance program.

The current exemptions for houses of worship exist in order to protect religion from state intrusion and were intended to apply to these organizations only as private sectarian-based entities. If such organizations become providers of taxpayer-funded government services, the rationale for their special status diminishes and the rationale for treating them as any other government grantee is strengthened.

H.R. 7 goes even further, however, by adding a significant new right for sectarian-based organizations not enjoyed by other grant applicants. It gives them standing to file a lawsuit against a federal, state or local official or agency alleging that they have been denied a grant on the basis of their religious character. Since no other grant applicant has a similar right to file a lawsuit challenging a grant or contract award, H.R. 7 goes well beyond "leveling the playing field."

Implementing charitable choice also appears to provide sectarian-based organizations with other special advantages in applying for federal funds. For example, in the fall of 1998, then-Governor Tommy Thompson's administration in Wisconsin announced that welfare agencies hiring church groups as partners would improve their chances of winning TANF contract renewals and of earning financial bonuses. Such

an entity, FaithWorks in Milwaukee, subsequently received $670,000 to run an addiction recovery program that uses a so-called "faith-enhanced" 12-step program and Bible study. It is now the subject of a lawsuit.

Such policies and practices will undermine and distort longstanding state and local government practices such as competitive bidding which are designed to ensure the selection of the most competent and effective providers. They will put public officials in a no-win situation. For example, if a mayor receives two applications from secular non-profit organizations and three from faith-based organizations representing different religions, he or she may fear that choosing the secular organization could lead to a lawsuit by a rejected sectarian-based applicant and that selecting one sectarian-based applicant could provoke a lawsuit from another. Religion could take precedence over proven experience and effective service delivery and capacity; and some religions may receive more favorable consideration for federal funds than others.

We also are concerned that H.R.7 may lead to religious-based discrimination against individuals eligible for federal childcare, job training, welfare, and housing programs or result in their involuntary acquiescence to religious instruction in exchange for assistance. The bill allows federal funding of programs that are religious in character as long as private funds pay for the religious portions of the program. This is the reason for the inclusion of the secular alternative requirement.

However, the secular alternative requirement has very real practical limitations. As noted previously, federal direct spending is expected to decline even though social services programs have a huge backlog of unmet needs. The bill does not specify whether the federal, state or local government is responsible for the guarantee of a secular alternative program. It also is silent on the right of an individual to file a lawsuit if the secular alternative is not available.

Since there appears no meaningful way to ensure the availability of the secular alternative in all cases, the promise of one is empty, and some very real dilemmas could arise as charitable choice is implemented more aggressively. For example, welfare recipients are subject to strict work requirements. If the only available and conveniently located program is a faith-based program with which the individual is uncomfortable, will he or she be sanctioned for refusing to participate? H.R. 7 does not address this issue directly.

No doubt there are other such instances in which indiscriminately inserting charitable choice provisions into a government program will have unintended and undesirable consequences. This is because charitable choice attempts to mix government and religion even though they are fundamentally different.

Sectarian-based organizations need to maintain their independence and religious character and remain free from government scrutiny and rules. Maintaining this independence is precisely what has protected the spiritual integrity of houses of worship and religious freedom for all of us.

Government needs to be accountable to the taxpayers and voters. Taxpayers appropriately expect a proper accounting for use of their tax dollars and remedial action in the case of misspent funds, fraud, or poor performance. Congress seeks to achieve certain policy objectives through provisions creating performance standards, licensing rules, auditing requirements, due process protections, equal representation of diverse interests in the administration of many federal programs, and other program requirements.

The notion of charitable choice is at odds with one of the fundamental principles on which the nation was founded: that both the citizens and religion are best protected when government and religion are kept separate. It does not, because it cannot, reconcile the two in any satisfactory way. Indeed, charitable choice is an idea with strong initial appeal that holds up less and less the more public scrutiny it receives.

Many of our ancestors fled to this country seeking religious freedom, and we have been successful in protecting their vision. It is no accident that religious freedom has flourished and that religious bigotry has not been tolerated. By keeping government out of religion and religion out of government, we have protected each person's religious beliefs while also protecting the government's duty to advance society's interests as each generation sees fit. Charitable choice is an unwise departure from this tradition and should be rejected.

Chairman MCCRERY. Thank you, Ms. Meiklejohn. And we appreciate your stepping in on short notice to substitute.

I thank all the witnesses for your testimony. Mr. Neal has one quick question.

Mr. NEAL. Thank you, Mr. Chairman.

Chairman MCCRERY. Right?

Mr. NEAL. One quick one for Mr. Yopp.

The question is that there is some criticism in some circles—and I have a Shriners hospital in Springfield which I am very proud of—but there is some criticism contributing excess IRA funds somehow becomes a threat to retirement security down the road. Do you think that that is a cause for concern?

Mr. YOPP. No, Congressman. I don't actually think that that is the problem. I think that the problem is that the people that want to donate to our charities today want it simple. They want the ability to take the money out of their IRAs, take it straight to the charity, donate the money, and have it, basically, tax-free.

Mr. NEAL. I didn't tell Mr. McCrery, but a second question quickly.

[Laughter.]

Mr. NEAL. Are you experiencing, in the hospital system, any large number of new patients, because of any circumstance that we are not aware of?

Mr. YOPP. Yes, Congressman, we are.

Basically, it appears as though some of the HMOs have reduced the medical benefits available to children and now have taken the position that cerebral palsy patients are not treatable.

Shriners hospitals is in the forefront of trying to treat cerebral palsy patients. Cerebral palsy patients will never be cured, but they can be made better. And Shiners hospital is doing their best to make them better.

So, we are getting a heavy influx now of cerebral palsy patients applying for our services.

Mr. NEAL. We appreciate what you do.

Mr. YOPP. Thank you, sir.

Mr. MCNULTY. Mr. Chairman, I just want to thank all of the witnesses for their testimony.

And I hope that Ms. Meiklejohn will give our best wishes to Chuck and tell him that we are all praying for his father's speedy recovery. Thank you.

Chairman MCCRERY. Thank you, Mr. McNulty.

And, again, I want to thank all the witnesses for your excellent testimony.

We have a vote on the floor right now. No other member of the Subcommittee has a question for this panel, so you all may leave and get something to eat or whatever you need do. [Laughter.]

However, we do have one more panel, so the members will be back, following this vote, to entertain testimony from the third and final panel of the day.

Thank you. The Committee stands in recess.

[Questions submitted from Chairman Herger to the panel, and their responses follow:]

United Jewish Communities
Washington Action Office
Washington, DC 20019
June 27, 2001

Wally Herger
Chairman, Human Resources Subcommittee
Ways and Means Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Herger:

Thank you for the opportunity to testify at the hearing of the Human Resources and Select Revenue Measures Subcommittees of the Ways and Means Committee on H.R. 7, the Community Solutions Act of 2001, on June 14, 2001. It is my pleasure to be able to respond to your additional question, with regard to ensuring secular alternatives in the delivery of social services under any Charitable Choice provisions.

As I stated in my testimony, the presence of a viable, secular alternative to any service provided by a house or houses of worship is absolutely critical in ensuring that clients in need of social services do not feel pressured or uncomfortable in receiving services in a religious environment.

In its current form, H.R. 7 does not provide adequate, proactive protection from this. Instead, H.R. 7 proposes that only *after* a client has an objection to the religious character of an organization providing services and conveys that objection in some way to the government, does the government have the requirement to fund a secular alternative. There is no mechanism created in H.R. 7 to ensure that this could happen, even after the fact. Current law on Charitable Choice, originally included as Section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act 1996 [H.R. 3734], contains similar language stating that an "alternative provider" should be provided for any client who objects to the religious nature of a social service.

I have reviewed the testimony of Dr. Amy Sherman to which you referred in which Dr. Sherman states that:

Out of thousands of service recipients engaged in programs offered by FBOs collaborating with government, interviewees reported only two complaints by clients who felt uncomfortable with the religious organization from which they received help. In both cases—in accordance with the charitable choice guidelines—the clients simply opted out of the faith-based program and enrolled in a similar program operated by a secular provider.

The testimony offered by Dr. Sherman is based on anecdotal information from interviews with "faith and government representatives" and not with the clients of these social service providers. Accordingly, there is a potentially significant disconnect between formally recorded incidences [and the providers' perceptions] and what a client's experiences and emotions are.

There is a strong likelihood that clients who feel uncomfortable with the atmosphere of a particular faith-based service provider, because of the specific religion of the provider or religiously coercive behavior, may choose simply to stop obtaining those services rather than lodge a formal complaint against the provider, especially where there is no accessible manner in which to request a secular alternative. Likewise, Dr. Sherman's research does not seem to account for any clients who may feel uncomfortable about the religious nature of a provider, but who choose to continue with the services out of fear that there is no alternative for them.

As a social worker who has spent years working directly with vulnerable populations, I can attest that the vast majority of clients do not have the self confidence, knowledge and wherewithal to insist upon their right not to be placed in potentially coercive environments. Many people who need assistance have a number of barriers that keep them from independence, including disabilities, mental illness, illiteracy and/or severe addictions. Their lives are difficult enough to begin with, without having the burden of informing the service provider which element of the program is unacceptable to them. It is easier not to seek the help in the first place with the result that clients' health and welfare may be jeopardized.

Unfortunately, there is no empirical data that supports Dr. Sherman's assertions. I would, however, like to offer some of our own anecdotal information as evidence that coercion and discomfort are very real and problematic issues that have arisen under current Charitable Choice laws, and will continue to arise if Charitable Choice is expanded.

United Jewish Communities was first alerted to the issue of Charitable Choice a few years ago, when the Jewish Federation of Greater Dallas contacted us about a specific experience. In that particular instance, a Jewish refugee was seeking services related to resettlement and naturalization, and was affirmatively sent by a government agency to receive services in a Christian church. For most clients, if the government suggests that they attend a particular social service agency, it would be unlikely that they would feel able to object to the same government about the religious character of a particular agency. Our Dallas client felt so uncomfortable that she and her family declined services.

The need for a viable secular alternative is not just an issue that arises in rural districts requiring a client to drive many miles to the service provider, it can be equally important in large cities. As you may know, the Federation system has resettled almost half a million Jews from the Former Soviet Union in the last 20 years. Many of these new residents are living in major metropolitan areas. Particularly for elderly Russian Jews, their neighborhoods can determine how and whether they receive social services. Even in the resource-laden and urban area of New York, the UJA–Federation of Jewish Philanthropies of New York has reported Jewish clients having trouble accessing non-religious services in their boroughs or local communities. Particularly with people who have faced extreme persecution based on their religion, it is unlikely they will be comfortable receiving religiously pervasive services under the auspices of a congregation of another faith.

A lack of adequate and holistic statistical data on this subject is just one reason to proceed cautiously and judiciously in expanding Charitable Choice provisions. More importantly, clients in social service agencies are often in crisis, with limited resources, and are much more likely to simply give up altogether, than to attempt to negotiate with local or state governmental entities to try and find [or wait to create] an alternative that does not contain religious programming or content. As we in the social service field begin to see clients who are harder to serve, and who posses increasingly more difficult barriers to self-sufficiency and independence, it is essential that we not establish even more obstacles in an effort to relieve need and despair.

In the end Mr. Chairman, I know you agree with me that our goal is to help provide relief and a helping hand to enable people to be as independent as possible. Before we change the system in such profound ways, we ought to be reasonably sure that the changes will produce improved outcomes. Thank you for the opportunity to submit information on your question. Please do not hesitate to contact me for any further information, or if you would like to schedule a meeting on this topic.

Sincerely,

Diana Aviv
Vice-President for Public Policy

cc: Benjamin L. Cardin, Ranking Member, Human Resources Subcommittee
John Conyers, Jr., Ranking Member, Judiciary Committee
Jim McCrery, Chairman, Select Revenue Measures Subcommittee
Michael R. McNulty, Ranking Member, Select Revenue Measures Subcommittee
Charles B. Rangel, Ranking Member, Ways and Means Committee
Jim Sensenbrenner, Jr., Chairman, Judiciary Committee
William M. Thomas, Chairman, Ways and Means Committee

American Federation of State,
County, and Municipal Employees
Washington, DC 20036

Wally Herger
Chairman, Human Resources Subcommittee
Ways and Means Committee
U.S. House of Representatives
Washington, DC 20515

Question 1: What do you mean by suggesting that the cost of the tax-related provisions in H.R. 7 "will contribute further to an erosion of the government-funded social services system" in the U.S.? Hasn't social services spending been rising over the past decades, and dramatically at that? Isn't such spending projected to continue rising in the future under the President's budget? So what are you referring to by suggesting that there already as been an "erosion" in funding that will deepen in the future?

Answer: The point that we were trying to make was that the $1.3 trillion tax cut, which recently was re-estimated to cost $1.8 trillion, will use up most of the projected available surplus revenue over the next 10 years. Enacting additional tax cuts, without offsets, will further erode the Federal government's revenue base and therefore erode its ability to fund domestic programs in general and social service programs in particular.

According to an analysis by the Center on Budget and Policy Priorities, in fact, the President's budget for domestic discretionary programs would increase by only 1.5 percent next year once certain technical adjustments are made. This is well below the inflation rate and a $9 billion cut below the Congressional Budget Office baseline. Indeed, the administration's budget proposes level funding or reductions for a number of the programs to which H.R. 7 would add charitable choice. For example, the adult, youth and dislocated worker programs under the Work force Investment Act would be reduced by an aggregate total of $359 million in FY 2002. It also cuts spending for the Community Development Block Grant program and freezes spending for the Job Corps and Community Service Employment programs for older Americans.

A historical look at Federal spending indicates that overall the Federal financial commitment to social services, employment and training and community development assistance was much stronger in the late seventies and early eighties than it is today, particularly when measured as a percentage of the Gross Domestic Product. When inflation and population growth are considered, Federal spending in these budget categories is about 50 percent less than it was in l9eighties. While there are some individual cases of large increases, notably for the Head Start program and foster care payments, generally Federal spending in these categories has fallen far behind. In some individual cases the effective drop in spending is dramatic. If the Title XX program had kept pace with inflation and population growth, it would be funded at $8.5 billion, instead of the $1.7 billion it receives today. The President's budget anticipates continued erosion if inflation and population growth is considered.

Question: Has there been any evidence that public agency employees have "lost their jobs" as you fear under charitable choice to date?

Answer: AFSCME represents employees of public agencies and non-profit social service agencies. Given the budgetary picture we have described, it is hard not to speculate that the available funds will have to be stretched among more providers or that some existing providers many not have their contracts renewed if charitable choice is adopted. This is especially true since religious applicants are the only organizations entitled to challenge grant awards in court.

The reality so far is that charitable choice has not been implement in any systematic manner so far. It has been incorporated into three Federal programs, the largest being the Temporary Assistance for Needy Families (TANF) program, but the Clinton administration interpreted the provision in a manner consistent with prior policy and practice. To our knowledge very few sectarian programs that have been funded. Therefore, it is not possible to draw any conclusions, based on the experience to date, about the full impact of charitable choice on either the public agencies or secular non-profit providers yet.

Sincerely,

Nanine Meiklejohn
Legislative Affairs Specialist
Department of Legislation

[Recess.]

Chairman HERGER. [Presiding.] This Ways and Means hearing will reconvene.

And I welcome our next panel to the table; Mrs. Humphreys, who is secretary of the Indiana Family and Social Services Administration. It is good to have you with us. Nathan J. Diament, director of public affairs of the Union of Orthodox Jewish Congregations of America. Good to have you with us. Mr. Brent Walker, executive director of the Baptist Joint Committee on Public Affairs. And Ms. Samantha Smoot, executive director of the Texas Freedom Network in Austin, Texas.

With that, why don't we begin our testimony. We may have another witness or so come in a little later.

Ms. Humphreys, if we could begin with your testimony, please?

STATEMENT OF KATHERINE HUMPHREYS, SECRETARY, INDIANA FAMILY AND SOCIAL SERVICES ADMINISTRATION, INDIANAPOLIS, INDIANA

Ms. HUMPHREYS. Thank you, Chairman Herger. And thank you Representative Cardin, Chairman McCrery, Representative McNulty, and other distinguished members of the Human Resources and the Select Revenue Subcommittees.

It is my pleasure to appear before this Joint Subcommittee today to provide information about FaithWorks Indiana, our State's initiative to involve faith-based and community organizations in providing services to Hoosiers in Indiana.

I am hopeful that our experience in Indiana with faith-based and community organizations helps advance the important dialog. As you go forward with considering expansion of charitable choice, we urge both caution and careful consideration.

We fear that to expand service opportunities to faith-based organizations will be counterproductive if those efforts unnecessarily threaten the religious character of those groups, violate the rights of those seeking assistance from government-funded programs, or include mandates that reduce the flexibility of States to pursue innovative solutions to furthering the objectives of welfare reform.

In Indiana, we, like other States, have had many challenges as we have pursued the objectives of welfare reform. We have had challenges with community capacity. We have had challenges in dealing with people who have not traditionally accessed the Health and Human Services networks. And these individuals have been more difficult because of multiple issues that they are dealing with.

But in response to these challenges, Governor O'Bannon launched FaithWorks Indiana on Thanksgiving in November 1999. And it was Indiana's attempt to widen the doorway for faith-based organizations to access funding.

Our program has several key ingredients: We have kept it simple. We have not changed our procurement systems, nor our evaluation systems. We have simply widened the doorway.

And during the first 18 months, we have developed a statewide technical assistance network to assist faith-based organizations interested in public funding. We have awarded contracts of $3.5 million to approximately 40 faith-based organizations. And we are coming to the end of our first grant year.

We have developed an infrastructure to support new providers on a variety of issues. We believe that the benefits of using faith-based organizations include taking advantage of their unique ties in their communities. They have a level of trust and respect from neighborhood residents that is unparalleled in many other organizations. They are generally close in the neighborhoods, close to people that they are intended to serve. And they have a new and different approach to serving people, who are often members of their congregation.

The critical components of FaithWorks Indiana is, number one, we do outreach to faith-based organizations; two, we use a very

strong performance-based contracting system; and, three, we have an advisory group that provides support for development of best practices; and, finally, we provide a wide range of technical assistance to faith-based organizations.

Our technical assistance includes needs assessment; information on other funding opportunities; proposal writing; reporting requirements; establishing a 501(c)(3), which we encourage but we do not require; and we also encourage them to partner with other organizations when and if appropriate.

We have developed an ongoing support structure, which includes an 800 number that they can all access; a Web site where they can get up-to-date information; and, again, the advisory group, which provides support for best practices.

We have no funding set aside for faith-based organizations. They simply compete on a level playing field. Providers are chosen on the basis of their ability to provide quality services.

In this last round of funding applications, we found that out of 150 applications, about a third of them were faith-based organizations.

We also do extensive site visits to faith-based organizations. And, again, these organizations are reimbursed through a performance-based contracting system. That is, if they are expected to provide General Educational Development (GED) training or job training, we pay them according to the numbers of people who receive those services and we pay them for successful outcomes.

Let me talk just for a moment about compliance. We do not fund worship or religious instruction. And that is included in the provider contract. We have on-site monitoring tools to ensure compliance, with corrective action plan procedures.

And we are in the process of developing—in fact, they are at the printer now—flyers and posters informing the clients that they are "in the driver's seat" and that they have the rights appeal, should they be forced into some sort of religious dialog with the providers of the service.

We intend to strengthen the monitoring procedures, including client surveys. We will be doing an evaluation at the end of the first year. We intend to expand this program out into the rural areas. And we are going to continue to identify public and private sources of funding for faith-based organizations.

And I won't take the time to tell you the many stories about the successes that we have had with a number of these programs, but I would like to say, in conclusion, that this debate is important, and we commend you for promoting and sponsoring it.

As a State administrator, I encourage you to maintain the direction and support, but most importantly, maintain the flexibility for States to develop their own programs. It is important for you to continue to consult with States like Indiana before proposing changes, and to learn what is going on in the States, what we are learning as we attempt to develop this program.

You need to agree to the basic parameters and principles and policy objectives as you debate this issue. The policy objectives should be focused on the outcomes, specifically the successful transition of people on welfare to productive lives and jobs that will support them. And to the extent that we achieve those outcomes,

people who need assistance, people in your community and mine, will benefit.

You need to encourage States to innovate, to give States the incentive and the latitude to "widen the doorway." Hold us accountable and we will accomplish great things, and so will the citizens of our State who are helped by this program.

Indiana is moving forward incrementally. We are moving slowly. We are learning as we go along. And we look forward to sharing our future success with this Committee and others in the future. Thank you very much.

[The prepared statement of Ms. Humphreys follows:]

Statement of Katherine Humphreys, Secretary, Indiana Family and Social Services Administration, Indianapolis, Indiana

Chairman Herger, Representative Cardin, Chairman McCrery, Representative McNulty, distinguished Members of the Human Resources and the Select Revenue Subcommittees, thank you for this opportunity to appear before this joint committee meeting today to provide information about FaithWorks Indiana, our state's initiative to involve faith-based and community organizations in providing services to Hoosiers in need.

I have reviewed H.R. 7, the Community Solutions Act of 2001, particularly as it relates to the role of states such as mine regarding the existing Charitable Choice provision, and proposed opportunities to expand this initiative. H.R. 7 continues the important dialogue we have started in our nation concerning the role of faith-based and community organizations in providing assistance to individuals and families in need in the most effective and efficient means possible.

I am hopeful that our experience in Indiana with faith-based and community organizations helps inform this important dialogue. As you go forward with considering expansion of Charitable Choice, we urge both caution and careful consideration. We fear that to expand service opportunities to faith-based organizations will be counterproductive if those efforts unnecessarily threaten the religious character of these groups or violate the rights of those seeking assistance from government-funded programs.

As you know, social services in our state and each state take up many, many important issues that directly affect the lives of our citizens. The issues are quite varied from the expansion of housing opportunities for individuals and families or helping our citizens as they age, to making sure child care is available for working families. Sometimes the help we provide is direct, such as in instances when we work to protect individuals and families from domestic violence or help provide a meal for people who are hungry.

As the Secretary of the Indiana Family and Social Services Administration, and as executive assistant to our Governor Frank O'Bannon, I am very pleased to outline some of the important work being done already under the existing Charitable Choice provision, for the people of Indiana. Faith-based and community organizations are actively involved in social services across our state.

A timely example of this involvement is at hand just this week—as we expect Governor O'Bannon to announce this year's grants for our state's successful Fathers and Families initiative that seeks to increase the role of fathers in the lives of their children. Among the grants being awarded this week, the Governor has included many faith-based and community organizations who seek to help in improving the role of fathers in families.

The people of Indiana are compassionate and caring about those in need. In Indiana, Hoosiers seek common sense solutions to situations and concerns that face our citizens.

And so the response of our faith-based and community organization providers to new opportunities afforded them under the Charitable Choice provision of the Welfare Reform Act is not at all surprising. Further, their interest and participation in FaithWorks Indiana, our state-level mechanism to help faith-based and community organizations access the system and create ways to help, has been particularly noteworthy.

Since Governor O'Bannon launched FaithWorks Indiana during Thanksgiving Week of 1999, the response has been outstanding. Statewide meetings drew hundreds of community groups, congregations and other faith-based groups to learn more about how they could participate. Since that time, faith-based organizations

have continued to grow in their knowledge and awareness of how to provide or expand services to those in need. More than 40 faith-based organizations have provided services under contract in Indiana since the inception of FaithWorks Indiana, under competitively-selected contracts for human services. There are many more that have chosen not to seek contracts, but to work in partnerships with our agency and other community groups to help families who have limited incomes or are seeking the training and skills they need to lift themselves from government assistance.

We view the work of FaithWorks Indiana as simply 'widening the doorway,' if you will, for a new generation of potential providers in human services and involving them in an integrated service strategy to help individuals and families move to self-sufficiency. These new providers help us build the provider base, and ultimately may contribute to increasing the quality and level of services offered to those in need.

As you know, faith-based and community organization providers have always had the opportunity to participate, to contract with the state to provide services. In Indiana, however, we have used the advent of Charitable Choice to develop FaithWorks Indiana to ensure each potential community provider can access the system.

This has not created any new burden on the system or the state—rather it has helped create broadened partnerships in providing services that bring new perspectives and approaches to supporting individuals in need. The technical assistance to access funding and services we provide is not a guarantee for faith-based or community organization providers, but it does assist them in learning how to develop services and access funding. A recent state-by-state survey on the participation of faith-based and community organization providers singled out Indiana as among the few states where significant, meaningful participation of faith-based and community organization providers is occurring.

This participation has occurred in our state without any list of special provisions or changes to how we did business before. We simply make our process more known in the community. Faith-based providers must compete to provide services to individuals in the same manner as any other potential contractor with the State of Indiana, utilizing the same procurement systems already in place. The difference is, the "rules of the game" have been presented to them.

When we do that—government wins because we obtain more competitive and more diverse bids; the bidder wins because a contract assists them meet a social responsibility or business objective; and the family wins because services are more available to them. This help includes educating them on available funding streams, help in identifying the needs of their communities, matching those needs with the funding, understanding necessary reporting and performance measurement systems, and developing their organizations to meet those needs. That same level of help is available, and offered to community-based providers of all types.

The key component in all of this effort is maintaining our commitment to performance-based contracting. We expect and demand from our contractors, faith-based or otherwise, that they perform specific services and achieve specific outcomes with those they serve. Payments are based on outcomes so that we can ensure that our service delivery system meets the need of those served. We pay only for performance and outcomes that we, the state advertise. Outcomes such as these have helped us win TANF High Performance Bonuses for the last two years in a row for success in the workplace.

Further, ongoing monitoring and reporting systems remain in place so that community-based and faith-based providers get the help they need to succeed, and that the State can assure that its outcomes and goals are being met. Monitoring includes on-site visits with providers, and discussions with individual feedback from those being served. We have been clear, no government funds will support worship, religious instruction or proselytizing.

We believe Indiana manages a system that succeeds in 'widening the doorway' of participation for community-based and faith-based providers, while preserving equity in the system and a commitment to positive impacts on the lives of those seeking help.

Our efforts have helped us in meeting what we believed were emerging needs in the post-welfare reform era in Indiana. Those included continued need for providers to focus services on the entire family and the "whole" individual. Our efforts also helped us as we looked for new ways to help clients needing long-term assistance—including those facing multiple, deeply-entrenched barriers to self-sufficiency.

Faith-based and community organization providers represent a new approach to helping for a couple of reasons: they are located in the community, near those we seek to serve; and they enjoy a solid reputation in the community which builds trust among potential clients.

In conclusion, let me tell you that much of what has been accomplished in Indiana has occurred because of the creativity and flexibility allowed under the federal Temporary Assistance for Needy Families (TANF) program, and the Charitable Choice provision. We are convinced that when given a chance, states and local communities can partner together to provide creative solutions to long-standing issues and challenges in human services. This is what makes your ongoing consideration of Charitable Choice all the more important as we go forward.

It is my hope that by outlining some of the success we have enjoyed in carrying out the spirit of the Charitable Choice provision in Indiana, we have helped further inform your debate.

Thank you for this opportunity to discuss Indiana's FaithWorks program.

Chairman HERGER. Thank you for your testimony.

And it is good to have Dr. Amy Sherman with us, senior fellow at the Welfare Policy Center of Hudson Institute.

And without objection, your full testimonies will be submitted for the record. And if you could summarize in 5 minutes, please. Dr. Sherman.

STATEMENT OF AMY L. SHERMAN, PH.D., SENIOR FELLOW, WELFARE POLICY CENTER, HUDSON INSTITUTE

Dr. SHERMAN. Thank you.

I have been asked to comment specifically on H.R. 7's proposal to expand charitable choice. As you know, charitable choice is currently applied within four Federal programs: TANF, Welfare to Work, Community Services Block Grant, and Substance Abuse and Mental Health Services Administration.

And, obviously, in considering the possibility of expanding it, we do well to examine its implementation and effects thus far. And my remarks on that topic are based on analysis from a nine-State study of the implementation of charitable choice, as well as additional research that I have conducted over the past few years.

Charitable choice aims to create a level playing field between secular and religious providers for public funding and was designed in part to facilitate increased government-faith collaboration without compromising the religious character of the service providers or abridging the religious liberties of clients. And based on my study of charitable choice implementation in the nine States, I have concluded that charitable choice has accomplished those aims:

First, it has made government and faith collaboration plausible to public officials and religious leaders. It has served as sort of a green light to public officials who now feel more comfortable reaching out to the faith sector because Washington has given its blessing.

Second, in interviews with both faith representatives and government representatives working collaboratively, I have found that religious groups are not being forced to sell their soul as a result of taking government funds, and I have found that clients' civil liberties have been respected.

The study uncovered no examples of faith-based organizations who felt that their religious expression had been squelched. And also, and very importantly, out of the thousands of service recipients engaged in the programs offered by faith-based groups, interviewees reported only two complaints by clients who felt un-

comfortable with the religious organization from which they were receiving service.

And in both cases, in accordance with charitable choice, those clients simply opted out of the faith-based program and enrolled in a similar program provided by a secular organization.

I should note that relatedly, the nine-State study also uncovered no example of clients being unable to exercise that right of getting into an alternative secular provider.

Third, charitable choice is stimulating new partnerships. One of the interesting findings of the study was that out of all the faith-based groups engaged in financial contracts under charitable choice in the nine States, 57 percent, or over half, were contracts with faith-based organizations that had no previous history of receiving government funding. Thus, as a result of charitable choice, the traditional social services network has, in fact, been broadened with the inclusion of new providers, which means more choices for clients in need.

Fourth, in some instances, charitable choice has helped to stimulate new and more deeply engaged relationships with struggling families. What I mean by that is that through their collaboration with government, some congregations and faith-based organizations are offering to low-income citizens services that they had not previously offered. Specifically, some have shifted from a more relief-oriented approach, such as offering food or clothing, to a more development-oriented approach, such as offering literacy programs or mentoring or job training.

So the bottom-line, in terms of the news from the front lines of the implementation of charitable choice, appears to be so far, so good.

As to the scope and nature of the implementation of charitable choice, in the nine States, I uncovered 84 examples of financial collaboration with contracts equaling approximately $7.5 million.

In the last 2 years, I have done some additional studies in seven other States and have uncovered charitable choice contracting equal to roughly $60.5 million.

The vast majority of these contracts, of course, are funded under TANF; the rest under Welfare to Work.

Mentoring and job training efforts were the most popular services that government has been purchasing through faith-based groups, although the study did uncover a wide variety of faith-based programs getting government funding, including literacy, and life skills, and homeless programs, and substance abuse recovery programs.

Findings from the nine-State study do indicate that, at least to a modest extent, charitable choice has made possible the provision of some faith-based social services for the poor that might not have been available otherwise.

Specifically, out of 71 contracts written with faith-based groups new to government funding, 13 underwrote services that the faith-based group had not previously offered and three were written to significantly expand a service that they were already providing.

In conclusion, in the past several years of doing some consulting and providing technical assistance to congregations and faith-based organizations, I believe that the expansion of charitable choice into

additional funding streams will significantly benefit low and moderate income families, because it will make possible both new programs in their communities as well as an expansion of current programs.

This is because it seems as though most congregations are more involved with children and youth than they are with adults, and many congregations and faith-based groups are involved in housing and economic development. But all of those services are not the ones typically purchased through TANF or Welfare to Work. Thus, by expanding charitable choice into Federal funding streams that do underwrite the services most commonly offered by faith-based organizations, we ought to see an significant expansion of these necessary services in distressed communities.

[The prepared statement of Dr. Sherman follows:]

Statement of Amy L. Sherman, Ph.D., Senior Fellow, Welfare Policy Center, Hudson Institute

GENERAL COMMENTS

Thank you for this opportunity to comment on the Community Solutions Act of 2001. I have been asked to comment on the implementation of existing Charitable Choice programs, since H.R. 7 proposes to expand the charitable choice guidelines to additional federal funding streams. My remarks are based on observations and analysis from the research I have been conducting on this subject for the past four years. First, I will make some general comments based on my study of charitable choice implementation in nine states (CA, IL, MA, MI, MS, NY, TX, VA, and WI) and then offer some specific comments on several topics of interest to this subcommittee.

Charitable Choice aims to create a level playing field between secular and religious service providers competing for public funding and was designed in part to facilitate increased government-faith collaboration without compromising the religious character of the service providers or abridging the civil liberties of clients. Based on my study of charitable choice implementation in the nine states, I concluded that charitable choice is accomplishing those aims:

First, it has made church-state collaboration *plausible* to public officials and religious leaders. Charitable choice has served as a "green light" to public officials who now feel more comfortable reaching out to the faith sector because "Washington has given its blessing" to such collaboration. Meanwhile, religious leaders who mistakenly believed that the principle of separation of church and state made financial collaboration improper have discovered within charitable choice a formal approval of such collaboration.

Second, interviews with faith and government representatives working collaboratively indicated that religious groups accepting government funding are not having to sell their souls, and clients' civil rights are being respected. The study uncovered almost no examples of faith-based organizations (FBOs) that felt their religious expression had been "squelched" in their collaborative relationship with government. Also, out of the thousands of service recipients engaged in programs offered by FBOs collaborating with government, interviewees reported only two complaints by clients who felt uncomfortable with the religious organization from which they received help. In both cases—in accordance with the charitable choice guidelines—the clients simply opted out of the faith-based program and enrolled in a similar program operated by a secular provider.

Third, Charitable Choice is stimulating new partnerships. Over half of the FBOs currently receiving government funding to underwrite new initiatives to serve the poor in the nine states I examined had no previous history of government contracting. Thus, the traditional social services network is being broadened with the inclusion of "new players." Moreover, and importantly, these new players are doing new things. That is, in their collaboration with government, churches and FBOs are offering low-income citizens services they had not previously offered. In most instances, these religious groups have shifted from merely providing commodities to the poor (e.g., used clothing or free groceries) to working with struggling individuals intensively, face-to-face, through mentoring and job training programs.

The bottom line, in terms of the news from the frontlines of the implementation of charitable choice is simply this: so far, so good.

SPECIFIC COMMENTS

Allow me now to comment on several specific topics of interest to this hearing.

First, what is the scope of state and local efforts to implement charitable choice in terms of writing contracts with faith-based organizations?

With regard to my study of the nine states, I uncovered 84 examples of financial collaborations crafted since 1996.[1] The total dollar amount of these contracts equaled approximately $7,518,667.[2] (See Table A.) Notably, 57 percent of these collaborations were between government agencies and FBOs that had had no previous history of receiving government funds; thus my earlier comment that charitable choice has indeed brought "new players" into the arena of government-supported social services. WI, CA, TX, and MI were the most active states in fostering new collaborations with FBOs, and the most common types of social services the FBOs were offering were mentoring and job training.

In addition to activities in these nine states, I have uncovered examples of charitable choice collaborations in seven other states: AR, IN, MD, NC, OH, WA, and WV. The total amount of contracting with FBOs I uncovered for these states equaled $60,669,000. I have not done an exhaustive survey and thus cannot say with certainty whether charitable choice contracting is also occurring in additional states. According to a recent survey of states conducted by the Associated Press, 31 states and the District of Columbia have awarded no government contracts "to religious groups who would have not been eligible" prior to charitable choice.[3] Based on the knowledge available, it is reasonable to conclude that roughly two-thirds of states have not pursued new financial contracting opportunities with FBOs under charitable choice. Such a conclusion also fits with what we know about charitable choice *compliance* by the states. According to the Center for Public Justice's National Charitable Choice Report Card, 37 states and the District of Columbia received a failing grade of "F." This grade indicates that these states have not made the necessary changes in their procurement procedures and contracting language that would bring them into compliance with the charitable choice guidelines.[4]

Table B provides some data drawn from a variety of news reports concerning additional contracting activities occurring in the nine states and other states. For all the states except MD, NC, and WV, these figures concern the total amount of contracting with FBOs; i.e., they count not only those contracts written with organizations new to formal public collaboration but also those with a history of receiving government funds. As Table B indicates, the total of these contracts comes to $60,669,000.

Thus, I estimate that the total amount of contracts in these 15 states, written both with FBOs new to financial collaboration with government and FBOs with previous government contracts, equals approximately $68,187,667.000.[5]

However, the figures we are most interested in when we pose the question, "How much charitable choice contracting is actually happening?," are those that tell us about the scope of contracting *with FBOs that are new to the arena of formal government collaboration*. After all, Charitable Choice purposes to create a level playing field for faith-based providers of social services in the competition for public funding; it is about providing equal access to organizations that desire to preserve their religious identity and character when receiving public dollars. Therefore, in Table C, I have provided an estimate of the total of contracting between government agencies and these "new players" in the nine states of my original study. The grand total of such contracts for these nine states equaled $5,029,755. This means that, of funds undergirding all the financial contracts these nine states wrote with FBOs, approximately 67 percent of the dollars went to FBOs that were not part of the traditional—some would say "old boys' network" of—religiously affiliated social service providers.

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[1] A very small number of the programs listed in Appendix B are targeted to low income communities rather than low income individuals. While such programs are not formally means tested, they should be considered part of the overall welfare system. Only a small fraction of aggregate welfare spending is provided through such programs.

[*2] Appendix B provides a list of the major Federal and state welfare programs covered in this testimony.

[3] The White House, *A Blueprint for New Beginnings: A Responsible Budget for America's Priorities,* (Washington, D.C.: U.S. Government Printing Office, 2001)

[4] Income Security (function code 600) contains some non-welfare expenditures, specifically outlays for retired Federal employees and other retirement spending. However, the rate of growth of this retirement spending changes little from 1 year to the next, therefore once the Code 600 outlay totals are known one can predict the means-tested component with reasonable accuracy.

[5] The White House, p. 196.

Finally with regard to the scope of contracting, it should be noted that the vast majority of contracts uncovered in the study were those funded under the TANF (Temporary Assistance to Needy Families) program. The rest were funded under the Department of Labor's Welfare to Work program. I found no instances of contracts with FBOs written under the CSBG (Community Services Block Grant) or SAMHSA (Substance Abuse and Mental Health Services Administration) programs (these are the other two federal funding streams currently regulated by charitable choice).

The second topic of interest concerns the nature of services being provided to the poor through these government-faith collaborations.

By far in the nine states studied, mentoring and job training efforts were the most popular programs being funded through contracts with "new" FBOs. From the information available regarding contracting in other states besides those nine, again mentoring and job training services topped the list. That is not to say, however, that these are the *only* services being offered. Under charitable choice, FBOs are also providing transportation services, life skills training, shelter and counseling for the homeless, and substance abuse recovery programs.

Third, we can ask the question: What difference is charitable choice making? In other words, to what extent are states and communities contracting with FBOs that could have received private funds and provided the services without charitable choice?

This is not an easy question to answer in the absence of significant discussions with the leaders of FBOs that are involved in these contracts. What we can say, from the nine-state study, is that there were 71 contracts government agencies had written with FBOs that did not have a previous experience of accepting government funding. Out of those 71 contracts, 13 were to underwrite a new service that the FBO had not previous offered and 3 were with nontraditional FBOs who, as a result of their charitable choice contracts, significantly expanded an "old" service.

Regarding activities outside the nine states of the original study, it appears that charitable choice has stimulated new services by nontraditional FBOs in West Virginia (Mission West Virginia) and in North Carolina (Faith Empowerment Coalition) and that it has stimulated a significant expansion of current services by other nontraditional FBOs (e.g., Jobs Partnership in NC and Payne Memorial Outreach in MD).

Fourth, we can ask to what extent are states putting into place the necessary infrastructure for recruiting and managing faith-based involvement.

Table D lists some information relevant to this query. As it indicates, 14 states have formally designated staff persons to serve as liaisons to the faith community (AZ, AR, CA, CO, GA, MD, NJ, NY, NC, OH, OK, PA, TX, VA). Indiana has established Faithworks, an agency within the state's Family and Social Services Administration specifically designed to provide to FBOs technical assistance about contracting with government. Texas actually designates a staff person as a faith-based liaison in each of the DHS's ten regions; Texas has also put in place an accounting/reporting system to keep track of the number of contracts being written with FBOs by the Department of Human Services and by the Texas Workforce Commission. Virginia and North Carolina, in addition to their state-level liaison to the faith community, have designated regional or county-level faith-based liaisons.

In addition, some states have formally reached out to the faith community by sponsoring state-wide or regional conferences on the faith community role's in welfare reform. VA, CO, TX, NJ, IN, OH and PA are among those that have done this; OK and UT are currently planning such events.

In states that have pursued significant privatization of welfare service delivery, to discover how charitable choice is being implemented it is necessary to examine the relationship between FBOs and those nongovernment entities that hold contracts with state government to administer welfare and/or operate "One Stop" career centers. As regards this group, a few findings are notable. Wisconsin has formally encouraged private welfare contractors known as "Local Service Providers" (LSPs) to subcontract with FBOs by making such subcontracting a "best practice" that state officials look for when reviewing the proposals of competing LSPs.[6] Also, Florida's state Workforce Development Board is currently underwriting a dialogue between FBOs, business leaders, and individuals from the One Stop Centers that has as its aim the production of a series of recommendations for the state as to how it can

[6] Projected outlay figures taken from Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2001,* (Washington, D.C.: U.S. Government Printing Office, 2000). Table 32–2, pp. 352–364.

facilitate fruitful collaboration between the state's One Stop Centers and the faith community.

Fifth and finally, we can ask what lessons have been learned thus far concerning the implementation of charitable choice.

The first two, most obvious lessons are that (1) there exists a great need to educate public officials about charitable choice and (2) public officials need to be held accountable to comply with charitable choice in their state policies and procedures. Charitable Choice is the law and is not optional.

The other lessons may be less obvious. One is to recognize that direct financial collaboration between government entities and FBOs is just one means of cooperation. My nine-state study uncovered over 40 examples of creative, *non-financial* collaborations through which individuals in need were receiving important supportive services from FBOs. In addition, the fact that Charitable Choice provides equal access to FBOs in the competition for public funding does not mean that efforts to create *other* means of increasing resources to effective FBOs should not be simultaneously advanced. H.R. 7 is attentive to these by proposing changes to allow nonitemizers to deduct charitable contributions and permit tax-free withdrawals from IRAs for charitable contributions. Congress would do well also to pursue efforts to increase the use of vouchers in the social service arena and encourage federal and state charity tax credits.

Moreover, in a significant number of cases (20), the financial relationship between the government and the FBO was an *indirect* one, mediated via a strategic intermediary organization. In these examples, government wrote a generally large contract with the intermediary organization (usually a large, administratively sophisticated nonprofit such as Goodwill) and then the intermediary organization wrote subcontracts for specific services with smaller-sized FBOs. This arrangement was universally reported as a win-win situation. Government was enabled to write one large contract with an organization that it was confident had the technical expertise and experience to appropriately manage and administer the dollars, and small and midsized FBOs that would never have been able successfully to secure or administer a huge contract were able to partner with the intermediary and receive a modest and manageable amount of funding that supported their important and needed work. The FBO leaders from these arrangements that I interviewed also often volunteered that they were glad for the additional "distance" from government the indirect contracting mechanism afforded; they felt possible church/state tensions were diminished in this "arms-length" relationship.

A second less obvious lesson learned is that, despite significant media accounts to the contrary, conservative and Evangelical faith-based organizations are notably involved in charitable choice contracting. Fully 20 of the 84 financial collaborations engaged organizations labeling themselves conservative or Evangelical.

Third, the nine-state study uncovered no examples of a client being unable to exercise his or her right of receiving services from an alternative, secular provider. The charitable choice guidelines insist that states must provide a secular alternative for clients who do not desire to receive their services from a faith-based provider. Even in my interviews with public officials from rural areas, I did not hear of any examples of clients being unable to exercise this right because of the lack of a geographically accessible secular provider.

Fourth, it is clear that both public officials and faith-based leaders need to be more careful to incorporate the charitable choice guidelines into the language of their contracts. In many instances, the contracts written with the FBOs utilizing federal funds regulated by charitable choice were the standard, "boiler-plate" contracts used prior to the 1996 reforms. Such contracts do not include the formal language of the charitable choice provisions. As noted earlier, this failure to codify charitable choice in these contracts has *not* led to serious problems with respect to the rights of FBOs or service beneficiaries. Nonetheless, as government-faith collaborations continue to increase, it will be important for both parties to be more intentional in formalizing their working relationship according to the guidelines specified by charitable choice. Doing so will further minimize the likelihood of problems for either FBOs or clients.

Fifth, and finally, it is clear that charitable choice contracting is not a good option for *all* FBOs. Some lack the necessary administrative capacity for managing government contracts of any significant size. Others, based on their theological doctrines, cannot in good conscience accept government funding. Still others may so premise their community healing efforts on direct evangelism and proselytization that they would find it difficult to navigate the guidelines of charitable choice, which protect the religious character of FBOs receiving public funding but prohibit the expenditure of public dollars for purposes of sectarian worship or proselytization. However,

for many other FBOs, collaborating with government may be a fruitful strategy that advances their mission and strengthens their community development projects and/or their initiatives to lovingly assist vulnerable citizens in achieving their highest potential.

H.R. 7 takes seriously the tremendous current contribution FBOs and houses of worship currently make in strengthening America's social safety net. Recent studies by Professor Ram Cnaan of the University of Pennsylvania[7] and Professors Carl Dudley and David Roozen of Hartford Seminary,[8] for example, suggest that over 85 percent of congregations provide critical social services, from preschools to prison ministries, health clinics and tutoring programs, to food pantries and literacy classes. Moreover, there is significant anecdotal evidence as to the effectiveness of FBOs in solving our most difficult social problems[9] and growing empirical evidence of the importance of religion in the lives of at-risk youth in assisting them to escape the deleterious effects of living in disordered and distressed neighborhoods.[10] In the era of welfare reform devolution, it is clear the strength of the faith sector must be tapped in the great struggle against poverty. H.R. 7 proposes to do so through a variety of means. The expansion of charitable choice is one—certainly not the only effort needed—but one that has thus far well-served the interests of those whom many in our society consider "the least of these."

TABLE A.—CONTRACTING UNDER CHARITABLE CHOICE

[Results from 9-State Study (research completed 8/99)]

State	Direct Contracts	Indirect Contracts
CA	$1,116,608	$771,000
IL	$1,313,000	$490,000
MA	$40,000	$300,000
MI	$744,470	$ 10,000
MS	NONE	NONE
NY	$1,860,705	NONE
TX	$130,449	NONE
VA	$114,568	1 (no $ info)
WI	$385,867	$242,000
SUBTOTALS	$5,705,667	$1,813,000
GRAND TOTAL = $7,518,667		

TABLE B.—ADDITIONAL/UPDATED INFORMATION

[AP and other news accounts, 2001]

State	Amount	#
AR	$ 1,000,000 est.	14
IN	$3,500,000	40
MD	at least $1,500,000	at least 1
MI	$ 30,000,000	[11] 150
MO	$ 1,005,000	12 est.
NC	at least $363,000	at least 2
OH	$17,000,000+ est.	at least 31
TX	$ 5,000,000 ('00–'01)	23
WA	$ 951,000 (since '98)	# not given
WVA	$ 350,000 (at least)	1 (at least)
SUBTOTAL = at least $60,669,000.		

[11] $2 million was awarded in 19 contracts to FBOs with no formal history of receiving government funds.

[7] Ram A. Cnaan and Gaynor I. Yancey, "Our Hidden Safety Net," in E.J. Dionne and John J. DiIlulio, Jr., eds., What's God Got to Do with the American Experiment? (Washington, D.C.: The Brookings Institution, 2000) chapter 21.

[8] Carl S. Dudley and David Roozen, "Faith Communities Today," (Hartford Institute for Religion Research at Hartford Seminary, March 2001).

[9] See, for example, Amy L. Sherman, Restorers of Hope (Crossway Books, 1997); Ronald J. Sider, Just Generosity (Baker Books, 1999), and Robert L. Woodson, Sr., The Triumphs of Joseph (The Free Press, 1998).

[10] See, for example, Byron R. Johnson, "A Better Kind of High," (University of Pennsylvania Center on Research on Religion and Urban Civil Society, 2001).

TABLE C.—CHARITABLE CHOICE CONTRACTS WITH "NEW PLAYERS"

[Results from 9-State Study]

State	Direct Contracts	Indirect Contracts
CA	$1,116,608	$771,000
IL	$1,313,000	$490,000
MA	$ 40,000	$300,000
MI	$ 301,300	$ 10,000
MS	NONE	NONE
NY	$ 150,000	NONE
TX	$ 95,449	NONE
VA	$114,568	1 (no $ info)
WI	$ 85,830	$242,000
SUBTOTALS	**$3,216,755**	**$1,813,000**
GRAND TOTAL = $5,029,755		

TABLE D.—STATES' EFFORTS TO REACH OUT TO FBOs

Faith-based Liaisons

*14 states have formally designated a staff person(s) to serve as liaisons to the faith community (AS, AR, CA, CO, GA, MD, NJ, NY NC, OH, OK, PA, TX, VA).

Conferences

*VA, CO, TX, NJ, IN, OH, OK, PA and UT are among those that have sponsored state wide or regional info conferences.

Technical Assistance

*IN and TX have formal systems for providing TA to FBOs.

Monitoring/Tracking CC Implementation

*TX has a formal system.
*Data provided by Wisconsin's Department of Workforce Development.

APPENDIX A.—F–B CONTRACTING IN CONTEXT IN WI 2000

Region Name	Total Contracting	FB Contracting	%
Ashland Region	$2,273,703	$360,922	16%
Eau Claire Region	$723,004	$41,400	6%
Green Bay Region	$5,762,893	[12] $920,088	16
Milwaukee W–2 Agencies Employment Solutions	$10,038,462	$400,400	4
YW–Works	$3,112,353	$115,200	3.7
OIC	$41,545,000	$77,500	>1
Maximus	$1,491,084	$171,001	1.4
UMOS	$1,518,464	$92,465	6

[12] Does not include contracts with two FBOs that receive money on a per client basis.

Chairman HERGER. Thank you for your testimony, Dr. Sherman.

And now we will hear from Reverend Luis Cortes, president of the Nueva Esperanza in Philadelphia, Pennsylvania. Reverend Cortes?

STATEMENT OF REVEREND LUIS CORTES, JR., PRESIDENT, NUEVA ESPERANZA, INC., PHILADELPHIA, PENNSYLVANIA, AND CHAIRMAN, NATIONAL HISPANIC RELIGIOUS PARTNERSHIP FOR COMMUNITY HEALTH

Rev. CORTES. Thank you, Mr. Chairman.

I represent Nueva Esperanza, the largest Hispanic faith-based community development corporation in the country. I also serve as chairman of the National Hispanic Religious Partnership for Community Health, a national ecumenical umbrella organization of over 5,000 Hispanic congregations in 40 States, Puerto Rico, and the District of Columbia. It is the only network of its kind in the country.

I represent the hundreds of Hispanic communities of poverty that desperately need this legislation. H.R. 7 would allow us to compete for Federal funds in areas such as health care, housing, economic development, childcare, juvenile delinquency, crime prevention, and domestic violence prevention, where are currently precluded to compete but most qualified to serve.

Remove this discriminatory practice against us and create a level playing field and allow all who wish to increase service to their communities to compete for Federal funds. Only the most qualified will ultimately receive Federal funding, but the opportunity to compete should be for all.

Once allowed to compete, faith-based organizations can do a better job of reaching those the Federal programs are designed to serve. I know we can do better because we have done so with State funds, private funds, and foundation grants, and local initiatives.

Located in Hispanic Philadelphia, Nueva Esperanza serves the poorest community of our city. In a community with a 40 percent male high school drop-out rate, we run a charter high school program that is a national model and recently started a junior college.

We have built and rehabilitated over 100 single-family homes and helped over 700 families obtain their first mortgage.

We own a 150-acre campground outside of the city where many Philadelphia children experience their first overnight camping experience, their first night outside of the city.

We are currently developing a 6-acre industrial site into a community service building, and it is turning around an entire neighborhood.

We have touched thousands of lives in Philadelphia and Nueva is just but one agency with only 13 years in existence. Congregations and faith-based organizations can do so much more if we are provided the opportunity to compete for resources.

And there is a need for more. Despite America's recent prosperity, many Americans have indeed been left behind: 34.5 million Americans live below the poverty level; 44 million go without health insurance. Many are Hispanic Americans who, despite working very hard, find themselves isolated in rural and urban communities. Isolated first by poverty and second by language.

The Hispanic families turn to the local faith community as their primary place of assistance. In many Hispanic communities, the local congregation is the only institution that is owned by the people of the community—not the police, not the fire, school, or even the social service agency, if one exists.

In the Hispanic congregation, even God speaks Spanish.

Our people turn to that institution because of their trust in it—trust that has been earned through decades of service. It is a better, faster, and more effective way to communicate and serve those in need.

Frequently, the most trusted institution, churches and congregations are physically and socially at the center of the Hispanic community. Unfortunately, congregations in those communities are in the poorest neighborhoods, and they reflect the economics of that neighborhood and often lack the finances to provide better services.

Expansion of charitable choice would provide the opportunity to partner with the Federal Government to help serve our communities, to reach those who have remained untouched by traditional agencies and services.

It is faith-based 501(c)(3) agencies like Nueva Esperanza, founded by people with a mission, connected to and trusted by the community, that have the best chance at succeeding where traditional agencies have failed.

I believe faith-based institutions can do better because of their desire and motivation to succeed. Service is not just employment, but also a sacred trust, a duty, a mission.

For religious organizations, it is a mission that is bound by our religious conviction to love. This is a commodity that cannot be purchased by government, and it is a byproduct of the mission, yet it is the ingredient that has assisted more people to transform their lives.

Mr. Chairman, there are unfortunate families; they are on the brink of dissolving. Hungry, abused, neglected, isolated Latino Americans—they need help and this is what is at stake here.

This is what charitable choice is about. I ask you to allow us to compete and show that we are worthy of the opportunity.

Thank you for allowing me to testify before you today.

[The prepared statement of Rev. Cortes follows:]

Statement of Reverend Luis Cortes, Jr., President, Nueva Esperanza, Inc., Philadelphia, Pennsylvania, and Chairman, National Hispanic Religious Partnership for Community Health

Thank you, Mr. Chairman, and members of the Committee for inviting me to testify before you today on the importance of H.R. 7—the Community Solutions Act of 2001.

I am The Reverend Luis Cortes, Jr., president of Philadelphia-based Nueva Esperanza—the largest Hispanic faith-based community development corporation in the country. I also serve as chairman of the National Hispanic Religious Partnership for Community Health, a national ecumenical umbrella organization of over 5,000 Hispanic congregations in 40 states, Puerto Rico, and the District of Columbia. It is the only network of its kind in the country. The Partnership was initiated under the Clinton Administration but it is only today, with President Bush's faith-based initiative and the advancement of H.R. 7 that its full potential can be realized.

Communities of poverty desperately need this legislation. Unfortunately, a great deal of confusion and misconception still exists about what this legislation will and will not do, and why it is so very important.

The misconceptions regarding H.R. 7 fall into three broad categories: issues surrounding the separation of church and state guaranteed by our First Amendment, concern over discriminatory hiring practices and, most important, questions regarding the necessity of expanding charitable choice to serve Americans in greatest need.

The first misconception is that by permitting government funding of faith-based social service providers, H.R. 7 threatens the First Amendment—the cornerstone of American religious liberty—the separation of church and state.

H.R. 7 clearly prohibits federal, state, and local funds from being used for "sectarian worship, instruction, or proselytization." This, quite simply, insures the Acts' compliance with the First Amendment. Nueva Esperanza has served the Hispanic community in Philadelphia for over twelve years and we have never proselytised, we do not attempt to convert anyone from their beliefs, if any, to ours.

Nueva Esperanza is not a church—we are a 501(c)(3) agency that provides services to our community. Our mission is to serve those in need. Many, if not most,

of our hospitals and universities began and remain faith-based institutions, working side by side with all levels of government and the private sector for generations. At Nueva we, like these hundreds of faith-based hospitals, universities and thousands of non-profit faith-based based agencies, understand the distinction, the need to separate church and state.

The second misconception surrounds claims that The Community Solutions Act would allow faith-based groups to discriminate in their hiring practices, excluding those with different beliefs, different lifestyles. It is actually the Civil Rights Act of 1964 that states, "in order to maintain their religious character, faith-based organizations may require that its employees adhere to the religious practices of the organization". This provision has been in place for over 35 years.

Over the course of nearly four decades this provision has been at the disposal of religious organizations that have been providing services to the poor with government assistance. Nueva, for example, has hired hundreds of people and religious preference has not been an issue in our hiring. Catholic Charities, the Salvation Army, countless faith-based universities and hospitals have done the same. There is no evidence that the 1964 Civil Rights Act has led to discriminatory hiring practices in four decades. Nor would we expect any with the passage of H.R. 7.

The third misconception and most fundamental area of confusion relates to the need to expand charitable choice. Charitable choice refers to the provisions of the 1996 welfare reform legislation that allows faith-based organizations to compete for federal funds—but only under the limited Temporary Assistance to Needy Families (TANF) jurisdiction. To date, these funds have been used very successfully for social services block grants, and drug and alcohol addiction services. The charitable choice provisions of H. R. 7 would allow faith-based organizations to compete for federal funds in areas from which they are currently precluded.

We have a fundamental right in this country to compete. H. R. 7 would allow us to compete for federal funds in areas such as health care, housing, economic development, childcare, juvenile delinquency, crime prevention and domestic violence prevention. These are areas where today congregations are never allowed to compete and faith-based non-profit organizations are only occasionally allowed to compete for federal program funds. We should create a level playing field, remove past biases against us, allow all who wish to increase service to their communities to compete for federal funds. Only those most qualified will ultimately receive federal funding, but all should be allowed to compete.

Once allowed on the playing field, we can do a better job of reaching those the federal programs are designed to serve. I know we can do better because we have done so already. We have done so with state funds and private funds and foundation grants and local initiatives.

Nueva Esperanza is located in Hispanic Philadelphia, the poorest community of our city. In a community with a 40% male high school drop-out rate, we run a charter high school that serves as a national model and recently started a junior college. We have built and rehabilitated over 100 single-family homes and helped over 700 families obtain their first mortgage. We own a 150-acre campground outside of the city where many Philadelphia children experience their first overnight camping experience, their first night outside of the city. We are currently developing a 6-acre industrial site into a community service building and it is turning an entire neighborhood around. We have touched thousands of lives in Philadelphia and Nueva is just one agency with only thirteen years in existence. Congregations can do so much more if we are provided the opportunity to compete for resources.

And we must do more. Despite our recent prosperity many Americans have indeed been left behind. 34.5 million Americans live below the poverty level; 44 million go without health insurance. Many are Hispanic Americans who, despite working hard, find themselves isolated in rural and urban communities. Isolated, first by language and second, by poverty. These Hispanic families turn to the local faith community as their primary place of assistance. In many communities the local congregation is the only institution that is owned by the people of the community. Not the police, fire, school or even the social service agency—if one exists. In the congregation even God speaks Spanish. Our people turn to that institution because of their trust in it—trust that has been earned through decades of service. It is a better, faster and more effective way to communicate and serve those in need.

Churches and congregations are physically and socially at the center of the Hispanic community, frequently the most trusted institution. Unfortunately, congregations in the poorest neighborhoods reflect the economics of that neighborhood and often lack the finances to provide better services. Expansion of charitable choice would provide the opportunity to partner with the federal government to help serve our communities, to reach those who have remained untouched by traditional agencies and services.

In Philadelphia, we have a 40% male high school dropout rate in the Hispanic community. We have a 38% teen pregnancy rate. Traditional agencies are not enough—we need to do more. It is faith-based 501(c) 3 agencies like Nueva—founded by clergy, run by a pastor, connected to and trusted by the community—that have the best chance at succeeding where traditional agencies have failed. We cannot leave these folks behind.

I believe faith-based institutions can do better because of their desire and motivation to succeed. Service is not just employment, but also a sacred trust, a duty, a mission. For religious organizations it is a mission that is bound by our religious conviction to love. This is a commodity that cannot be purchased by government; it is a by-product of the mission, yet it is the ingredient that has assisted more people to transform their lives.

I believe strongly that charitable choice should be expanded because it is the right thing to do to reach those in need. I also believe in doing the right thing even when it is not the most popular. Nonetheless, it was reassuring to learn of a recent survey by the Pew Charitable Trust where 70% of those surveyed support proposals to provide government subsidies to religious groups that run social-service programs (The Pew Forum on Religion & Public Life and the Pew Research Center for the People and the Press survey of telephone interviews with 2,041 adults, April 2001). I offer the following findings for your consideration:

77% of those surveyed said they thought a good reason to support government financing of religious groups was that it would make it easier for people in need of help to choose from a wide range of social service groups other reasons to support such aid. 72% felt that people who work or volunteer at religious group would be more caring and compassionate than those at other social service institutions or providers. 62% said that religious groups could do a better job than other organizations because the power of religion can change people's lives. 60% said that religious groups could provide services more efficiently than government programs.

Age. 80% of those under 30 support government aid to nonprofit groups that have a religious affiliation, compared with only 55% of those 65 and older.

Race and ethnicity. 81% of African-Americans and the same percentage of Hispanics support efforts to channel government aid to religious groups, compared with 69% of whites. Only 17% of African-Americans and 16% of Hispanics said they thought nonprofit groups could best serve people in need, compared with 28% of whites.

Income. People with higher incomes are slightly less likely to believe that religious groups should be able to compete for government funds—69% of people with family incomes of $50,000 or more support the idea, compared with 75% of those whose family income is less than $20,000. Affluent people are also much more likely to think nonprofit groups are best at providing social services-38% of those with family incomes of $75,000 or more believe that is true, compared with 21% of those with family incomes under $20,000.

(The report is available at HYPERLINK "http://www.pewforum.org" http://www.pewforum.org. with a synopsis available in the April 19 edition of The Chronicle of Philanthropy)

Mr. Chairman, there are unfortunate families, those that are on the brink of dissolving, hungry, abused, neglected, isolated Americans—this is what is at stake here. This is what charitable choice is about. I ask you to allow us to compete and show that we are worthy of the opportunity.

Thank you for allowing me the opportunity to testify before you today.

Chairman HERGER. Thank you, Reverend Cortes. And now Mr. Diament.

STATEMENT OF NATHAN J. DIAMENT, DIRECTOR OF PUBLIC AFFAIRS, UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA

Mr. DIAMENT. I thank you, Mr. Chairman.

I represent the Union of Orthodox Jewish Congregations of America (UOJCA), which is a nonpartisan organization in its second century of serving the traditional Jewish community, and rep-

resenting nearly 1,000 Jewish synagogues and their many members around the country.

Since you have entered our written testimony into the record, I will try to speak quickly and hit the highlights.

The first point I would like to make is that we should appreciate the fact that we are having in America in the early 21st century a great discussion both about the relationship between religion and State, and also a renewed discussion about how to deal with the social welfare challenges that confront us.

This effort has been spurred of late by the Bush administration's initiative, but it was also started, as has been noted earlier today, with four laws that were signed into law by President Clinton. I note this because it is often lost in the discussion that charitable choice initiatives have always been bipartisan initiatives, as they are in the case of H.R. 7. And just because this initiative is now receiving greater attention, that should not be the cause for baser partisanship, as some would have it.

The faith-based initiative does seem to have become of a political Rorschach test, with all sorts of people groups projecting their worst fears upon it. But if we think about the questions carefully, they are complex, but can we deliberate and come up with the right answers, I believe.

We at the UOJCA do not suggest, as some might, that every faith-based social service provider will do a better job than a secular or government agency. All of these entities are staffed by real people. Some will do better; some will do worse. Some people in need will be better served by a faith agency; some will not.

But I think we learned a long time ago that one-size-fits-all approaches are not the way to go these days. We need HUD and Habitat for Humanity; we need HHS and the Hebrew Home for the Aged.

Moreover, we believe that enacting charitable choice and expanding these partnerships is not an excuse for letting the government shirk its commitment to devote an appropriate level of financial and human resources directly to addressing social needs.

As to some of the issues that were raised earlier today in your members' panel, our position is that Establishment Clause stands for a simple proposition: that the government may not favor religion over other religions or religion over nonreligion. But it does not stand for the proposition that government must favor the secular over the sacred. The Establishment Clause, as the Supreme Court has said, demands neutrality toward religion, not hostility.

Just this past Monday, the Supreme Court reinforced this central understanding of the Establishment Clause in a decision called Good News Club v. Milford Central School.

That dealt with the question of whether of Christian youth group could have equal access to public school facilities after hours, along side the Boy Scouts and Girl Scouts and various other secular organizations. And the suggestion was the Establishment Clause would not allow the religious group to have equal access.

The Court said that: The suggestion that treating the religious youth group on a equal basis with secular groups would damage the neutrality defies logic. The guarantee of neutrality is respected, not offended, when government, following neutral criteria and

evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.

The Court also said: We decline to employ the Establishment Clause using a modified heckler's veto, in which a group's religious activity can be proscribed on the basis of what the members of the audience might misperceive.

A decision last year, entitled Mitchell v. Helms, also dealt with the neutrality question. It is a more fragmented and more complicated decision, but more akin to charitable choice. It also deals with direct government funding.

But it, too, puts neutrality as the central understanding of what the Establishment Clause requires on the part of government.

I would also say we are very focused upon the Free Exercise Clause, the religious liberty rights that are protected in H.R. 7 as well, both with regard to beneficiaries and with regard to agencies.

With regard to beneficiaries, we think it is critical that no religious coercion take place. And we view the opt-out, the notion that they are given notice and the opportunity to opt for a secular alternative program, as critical for how to protect the religious rights of all American citizens.

With regard to the faith-based providers, we believe that not augmenting or changing in any way the Title VII exemption, which has existed sine 1964 and has been upheld as constitutional by unanimous Supreme Court, should be altered in any way. We think it is critical for faith-based organizations to be able to determine their own character and to maintain their autonomy. And the Title VII exemption is critical in that regard.

I find it interesting, as a political afficianado, that this question has been seized upon by the opponents of charitable choice. I think it is a very smart political move on their part, because, after all, everybody in America is against discrimination. But what they fail to mention time and again, number one, is that this has been around for 35 years, and, number two, that it is incredibly narrow and incredibly sensible.

The notion of a faith-based institution engaging in faith-based hiring is not the same as Exxon discriminating against blacks or Texaco discriminating against Hispanic or any other example from the private sector that you could come up with. This is fundamentally different from employment discrimination in every other context.

It would be absurd to suggest that a Catholic church can get sued in Federal court because they wouldn't hire a Jew for their priesthood. And any suggestions along these lines does not respect the unique role and the unique capacities of religious organizations in our society.

We have to vigorously debate these issues as we have done today, in thoughtful and measured ways, but slandering sacred institutions with the charge of bigotry has to be ruled out-of-bounds.

In short and in conclusion, I would just say that we find the protections in H.R. 7 on all of these issues to be moving in the right direction. We think they could be changed in some respects, and I am happy to discuss that with you and other members of the Committee, if you so desire.

Thank you.

[The prepared statement of Mr. Diament follows:]

Statement of Nathan J. Diament, Director of Public Affairs, Union of Orthodox Jewish Congregations of America

Introduction

Thank you, Chairmen Herger and McCrery and Ranking Members Cardin and McNulty for the opportunity to address this hearing today. My name is Nathan Diament and I am privileged to serve as the director of public policy for the Union of Orthodox Jewish Congregations of America. The UOJCA is a non-partisan organization in its second century of serving the traditional Jewish community, and is the largest Orthodox Jewish umbrella organization in the United States representing nearly 1,000 synagogues and their many members nationwide.

On behalf of the UOJCA, I come before you today to address two legal issues that are relevant to the effort to expand the already existing partnership between government and faith-based social service providers: the first issue is the Constitutional issue raised by the First Amendment's religion clauses, the second issue relates to religious liberty protections contained in our nation's civil rights statutes.

But before addressing the legal issues, I would like to suggest that we step back for a moment and appreciate the broader context of our conversation today. Since this nation's founding, evaluating the role of religion in our society's public life has been part of our national conversation. But in recent months, this issue has been re-engaged with new vigor and prominence. Last year's nomination of an Orthodox Jew to a national ticket put the discussion back on the front page. This year's creation of the White House Office of Faith-Based & Community Initiatives has served as a catalyst for continuing this national discussion. The fact that we are having this discussion is in itself a wonderful thing for our democratic society.

Just as important is the fact that we are having a national discussion about finding new ways to address our social welfare challenges, particularly those confronting lower income populations. To have President Johnson's declaration of a war on poverty cited once again in public addresses appreciatively, rather than derisively is a welcome development.[1]

One more word of introduction, I believe is critical. It is the case that the Bush Administration's focus on faith-based initiatives has given this policy issue a new degree of attention. But I respectfully remind you that this is not a new initiative. It received bipartisan support in the congress and was signed into law by President Clinton on four occasions since 1996.[2] Moreover, it was one of the few public policy initiatives that enjoyed support during the last presidential campaign from both parties' presidential candidates.

In a major address to the Salvation Army, it was candidate Al Gore who stated: "The men and women who work in faith . . . based organizations are driven by their spiritual commitment . . . they have sustained the drug addicted, the mentally ill, the homeless; they have trained them, educated them, cared for them . . . most of all they have done what government can never do . . . they have loved them." Mr. Gore went on to propose what he called a "New Partnership" under which the "charitable choice" concept would be expanded. He stated: "As long as there is always a secular alternative for anyone who wants one, and as long as no one is required to participate in religious observances as a condition for receiving services, faith-based organizations can provide jobs and job training, counseling and mentoring, food and basic medical care. They can do so with public funds—and without having to alter the religious character that is so often the key to their effectiveness."[3]

I raise this today not to minimize in the least the commitment of President Bush and his Administration to this effort which is well known, but to remind you that, to date, "charitable choice" initiatives have been *bipartisan* initiatives, as they are in the case of H.R.7.

The fact that this initiative is now receiving greater attention should not be the cause for baser partisanship. The faith-based initiative does seem to have become a political Rorschach test, with some interest groups projecting their worst fears

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[1] Remarks by President Bush at University of Notre Dame Commencement Exercises, May 21, 2001. See, http://www.whitehouse.gov/news/releases/2001/05/20010521–1.html

[2] Personal Responsibility & Work Opportunity Reconciliation Act (Pub. Law 104–193); Community Services Block Grant (Pub. Law 105–285); Children's Health Act (Pub. Law 106–310); and Community Renewal Tax Relief Act (Pub. Law 106–554).

[3] Remarks by Vice President Al Gore on the Role of Faith-Based Organizations, delivered to the Salvation Army, Atlanta, GA, May 24, 1999.

upon it.[4] But the fact that this initiative raises complex and critical questions should give rise to careful and reasoned discussion—as we have engaged in today—rather than overheated fear-mongering.

Social Service Grants and the Establishment Clause

America's synagogues, churches and other faith-based charities already play an important role in addressing many social challenges—through soup kitchens and literacy programs, clothing drives and job skills training, our faith communities remain the "little platoons" of our civilized society. My organization believes that these institutions can play an even larger and more beneficial role if they are supported in that effort.

We at the UOJCA do not suggest, as some might, that every faith-based social service provider will do a better job than a secular or government agency. Each of these agencies are programmed and staffed by real people—some will do better than others. We do not assert that every person in need will best be served by a faith-based provider—some will, some won't; we've long ago realized that "one-size-fits-all" approaches do not work in most contexts—we need H.U.D. and Habitat for Humanity, H.H.S. and the Hebrew Home for the Aged. Moreover, we do not believe that including faith-based providers in the partnerships that government forms should be an excuse for letting the government shirk its commitment to devote an appropriate level of financial and human resources directly to addressing social needs.[5] But we do believe that if the government decides not to go it alone, but to invite partners from the private and public interest sectors in tackling social welfare challenges, then the government ought not say to one class of agencies—"you may not be our partner because you are religious."[6]

We submit that the Constitution's Establishment Clause stands for a simple proposition: that the government may not favor one religion over others, or religion over non-religion. But it does not stand for the proposition that government must favor the secular over the sacred. The Establishment Clause, as the Supreme Court has said, demands neutrality toward religion, not hostility.[7]

Neutrality, I submit to you, means that in a grant program, government must be "faith-blind," if you will. Government ought to establish grant criteria that have nothing to do with whether prospective grantees are religious or secular,[8] but simply whether they have the capacity to perform the service and obtain the results the government seeks to achieve through the grant. That is the essence of what the Establishment Clause demands in this context.

Support for this neutrality-centered view can be found in many Supreme Court precedents the most recent of which is *Good News Club v. Milford Central School,* just decided on Monday.[9] There, the Court reviewed the policy of a New York school district that allowed its public school facilities to be used for meetings by a wide range of civic and youth groups after school hours, but refused to allow a Christian youth group, the Good News Club, to use facilities for its meetings due to their religious content. Among the reasons the school district offered in support of its policy was that it was necessitated by the Establishment Clause. The Court ruled, by a 6–3 vote, that the school district's policy of exclusion violated the Free Speech rights of the Good News Club and that the Establishment Clause provided no basis for tolerating this violation.

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[4] See, Diament, A Faith-Based Rorschach Test, The Washington Post, March 20, 2001.

[5] For this reason, the UOJCA welcomed President Bush's recently announced plans to increase federal funding allocations for housing rehabilitation and drug treatment program grants. Notre Dame Commencement Address.

[6] This is exactly what the four existing charitable choice laws do; they do not provide for the indiscriminate funneling of government funds to churches and synagogues, they do provide that government grant makers cannot red-line such programs out of the funding pool on the sole basis of their religious character. Moreover, while charitable choice provisions permit participation by faith-based organizations, such participation is not mandated in any way.

[7] "It has never been thought either possible or desirable to enforce a regime of total separation" . . . nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." Lynch v. Donnelly, 465 U.S. 668, 673 (1984).

[8] I would refer the members of these Ways and Means Subcommittees to the testimony submitted last week by Professor Douglas Laycock, a leading scholar of the Constitution's religion clauses, to the House Judiciary Subcommittee on the Constitution in which he noted that currently there are no rules or regulations that prohibit government grant officials from discriminating against or among religions. See, http://www.house.gov/judiciary/2.htm

[9] 2001 WL 636202. The opinion may also be retrieved off the Court's website at http://www.supremecourtus.gov/opinions/opinions.html The ruling was supported by Justices Thomas, Rehnquist, Kennedy, Scalia, O'Connor and Breyer.

In its discussion of the Establishment Clause, the Court noted that it has "held that a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality toward religion."[10] Moreover, the Court noted that the suggestion that treating the religious youth group on an equal basis with secular groups "would damage to the neutrality principle defies logic. For the 'guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.'"[11]

The Court addressed several other aspects of the Establishment Clause challenge, the most relevant of which for this discussion is the concern over whether granting a religious entity a government benefit—even as a matter of neutrality—would be perceived as government endorsement of religion. The Court emphatically rejected this assertion stating: "We decline to employ Establishment Clause jurisprudence using a modified heckler's veto, in which a group's religious activity can be proscribed on the basis of what the . . . members of the audience might misperceive."[12]

While the question of to what degree religious groups may benefit from public resources was at issue in the *Good News* litigation, it is also the case that the government was being asked to permit a religious group to enjoy a relatively small and indirect benefit from public resources—the use of an otherwise empty public school classroom.[13] In the case of *Mitchell v. Helms*, decided one year ago,[14] the issue was whether the Establishment Clause would permit religious schools to benefit from government expenditures—arguably a closer analog to the issues raised in H.R.7.

In *Helms*, like *Good News*, six of the nine justices came down squarely on the side of the neutrality view of the Establishment Clause.[15] The issue before the Court was the constitutionality of a federal grant program which allows local education agencies to use federal funds for the purchase of supplementary educational materials, including textbooks and computers, for schools within their jurisdiction.[16] Because the aid was also made available to parochial schools within the jurisdiction, it was challenged as a violation of the Establishment Clause.[17] The Court rejected this challenge.

Justices Thomas, Rehnquist, Kennedy and Scalia rejected the challenge on the basis of a neutrality-centered understanding of the Establishment Clause without any qualifications. For these justices, so long as secular government aid is provided to religious institutions on the basis of religion-neutral criteria it does not violate the Establishment Clause, and the constitutionality of currently enacted and pending charitable choice laws is unquestionable.

Justice O'Connor, joined by Justice Breyer, also invoked the principle of neutrality, but with qualifications.[18] Inasmuch as this concurrence was essential to the Court's holding, it can be said that it is the O'Connor opinion that is controlling in *Helms*. At the same time, it must be noted that Justice O'Connor did not write a concurring opinion in the *Good News* case taking exception to the majority's strong focus upon the neutrality principle—as she did in *Helms*.

Working with the framework she developed previously in *Agostini v. Felton*,[19] Justice O'Connor determined that the program at issue did not violate the Establishment Clause because it furthered a secular purpose, did not have the primary effect

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[10] 2001 WL 636202 at 7, quoting Rosenberger v. Univ. of Virginia, 515 U.S. 819, 839 (1995).

[11] Id.

[12] 2001 WL 636202 at 8.

[13] Another possible distinction is that the Good News Club possessed a compelling Free Speech claim in its case, that serves as a counterweight to the Establishment Clause concerns. The anemic reading of the Free Exercise Clause afforded by the current Court, see City of Boerne v. Flores, 117 S.Ct. 2157 (1997), unfortunately provides no such counterweight, although it should.

[14] 530 U.S. 793, 120 S.Ct. 2530 (2000).

[15] This position is clearly enunciated by the plurality opinion of Justices Thomas, Rehnquist, Scalia and Kennedy and is at the core of the concurrence by Justices O'Connor and Breyer.

[16] Chapter 2 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97—35, 95 Stat. 469, as amended, 20 U.S.C. § 7301–7373.

[17] Many public interest organizations, including the UOJCA, filed friend of the court briefs in the Helms case. Not surprisingly, those who question the neutrality principle today in the context of charitable choice also questioned it there. It is worth noting that the Solicitor General, on behalf of Secretary of Education Richard Riley, argued in support of the program's constitutionality. See, http://supreme.lp.findlaw.com/supreme—court/docket/decdocket.html#98–1648.

[18] Justice O'Connor was not prepared to accept what she viewed as the plurality's "treatment of neutrality [as a] factor of singular importance" above other factors developed in the Agostini case. 120 S. Ct. at 2556.

[19] 521 U.S. 203 (1997), upholding a government funded program for secular special education teachers to teach in parochial schools. Writing for the Court's majority in Agostini, Justice O'Connor revised the much-maligned three prong test of Lemon v. Kurtzman, 403 U.S. 602 (1971).

of advancing religion,[20] and did not raise the likelihood that an "objective observer"[21] would believe the program was a governmental endorsement of a particular religion. It is important to note that, as part of this analysis, Justice O'Connor, like the *Helms* plurality, explicitly rejected the precedents of *Meek v. Pittinger*[22] and *Wolman* v. *Walter*,[23] which had held even the capability for (as opposed to the actual) diversion of government aid to religious purposes to be sufficient grounds to render an otherwise neutral aid program an Establishment Clause violation.[24] Finally, Justice O'Connor stressed that the aid provided under the education grant program was "secular, neutral and non-ideological," supplemented funds from private sources, and was expressly prohibited from being used for religious instruction purposes.[25]

Taking all of these considerations together, it is possible to construct a regime under which faith-based organizations may receive government social service grants in a manner consistent with the latest interpretation of the Establishment Clause.[26] This regime is evidenced in the previously enacted charitable choice laws and in the pending Community Solutions Act, H.R.7. The eligibility criteria for receiving a grant are religion neutral. The grant program serves the secular purpose of providing social welfare services to needy individuals. The grant funds are expressly prohibited from being "expended for sectarian worship, instruction or proselytization."[27] And Justice O'Connor's sophisticated "objective observer" would not believe that government support for the faith-based provider under this legislation constituted the endorsement of the particular religion.[28]

Moreover, the bill's accounting and auditing requirements are a safeguard against the diversion of funds for religious purposes, as well as an appropriate means of ensuring that public funds are expended for their specifically intended programmatic purposes.[29]

Free Exercise of Religion Considerations; For Program Beneficiaries

There are other safeguards in charitable choice laws that are not necessitated by the Establishment Clause, but by the Constitution's Free Exercise Clause—a feature of the First Amendment that ought to carry equal weight to the Establishment Clause but, for a variety of reasons, often seems forgotten—even by the Supreme Court.[30]

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[20] For Justice O'Connor, the question of whether an aid program has the primary effect of advancing religion is determined by whether: a. the aid is actually diverted for religious indoctrination; b. the eligibility for program participation is made with regard to religion; and c. the program creates excessive administrative entanglement.

[21] Justice O'Connor's "objective observer" is not the typical person on the street, but a person "acquainted with the text, legislative history, and implementation of the statute." Wallace v. Jaffree, 472 U.S. 38, 76 (1985).

[22] 421 U.S. 349 (1975).

[23] 433 U.S. 229 (1977).

[24] 120 S. Ct. at 2558. Justice O'Connor notes that the plurality bases its reasoning for this point on the Court's precedents that have allowed government aid to be utilized to access religious instruction, specifically *Witters v. Washington*, 474 U.S. 481 (1983), and *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993). O'Connor correctly notes that those cases relied heavily on the "understanding that the aid was provided directly to the individual student who, in turn, made the choice of where to put that aid to use," 120 S. Ct. at 2558, as opposed to a per-capita, direct aid program at issue in *Helms*. With regard to this issue in this context of direct aid to faith-based social service agencies, *see below* at note 22.

[25] 120 S. Ct. at 2569.

[26] Of course, *Good News Club v. Milford, Mitchell v. Helms* and the long line of school/religion cases that came before it pose Establishment Clause questions squarely in the area of K–12 education, where the Court has been most sensitive to Establishment Clause concerns. It is quite plausible that an assessment of the constitutionality of charitable choice programs would employ more relaxed criteria than those discussed in any of these cases.

[27] H.R.7 § 201(i).

[28] H.R.7, § 201(c)(3).states that the receipt of funds by a religious organization "is not and should not be perceived as an endorsement by the government of religion."

[29] These last two provisions lessen the need for the aid to flow on the basis of private and independent choices discussed above, note 18. At the same time, it is certainly the case that any "voucherized" mechanisms, as opposed to direct grants, for charitable choice will satisfy the conditions set out by Justice O'Connor in *Helms* in this regard. From a policy standpoint, however, a voucher-based approach has two principle shortcomings; it reinforces the non-neutral treatment of religious entities and it biases against newer participants and programs who cannot overcome start-up costs while waiting for vouchers to be presented by beneficiaries.

[30] Members of this Committee are well aware of the Court's recent apathy toward the Free Exercise Clause beginning with *Employment Division v. Smith*, 474 U.S. 872 (1990), resulting in the passage of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb. "RFRA" was struck down by the Court in *City of Boerne v. Flores*, 117 S.Ct. 2157 (1997) to which congress, led by members of this Committee, responded last year with the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc.

As members of a minority religion in this country, we in the Orthodox Jewish community are terribly sensitive to the issue of religious coercion in general, and certainly in situations where government support, albeit indirect, is involved. We believe government should bolster the "first freedom" of religious liberty at every opportunity. Thus, we would insist that there be adequate safeguards to prevent any eligible beneficiary from being religiously coerced by a government-supported service provider. We believe that a requirement that each beneficiary be entitled to a readily accessible alternative service program and that each beneficiary be put on specific notice that they are entitled to such an alternative is the proper method for dealing with this issue. Moreover, as a condition for receiving federal assistance, faith providers must agree not to refuse to serve an eligible beneficiary on the basis of their religion or their refusal to hold a particular religious belief. These safeguards are contained in H.R.7.[31]

Free Exercise of Religion Considerations; For Faith-Based Providers

There are also critical religious liberty considerations with regard to the protections afforded to religious organizations by the Constitution and federal civil rights laws. As you are already aware, the one that has received considerable attention from critics of the faith-based initiative is the thirty-seven year old federal law[32] permitting religious organizations to hire employees on the basis of religion.[33] A few basic points must be made with regard to this argument which, I believe, will set the record straight and refute the accusation that suggests that all American houses of worship are, in fact, houses of bigotry.

As the members of this Committee are well aware, the Civil Rights Act of 1964 is the great bulwark against objectionable acts of discrimination and Title VII of that Act bans discrimination in employment on the basis of race, ethnicity, gender, religion and national origin. It was the very same architects of modern civil rights law who created a narrow exemption in the 1964 Act permitting churches, synagogues and all other religious organizations to make hiring decisions on the basis of religion.[34]

It would be absurd, to say the least, to suggest that a Catholic parish could be subjected to a federal lawsuit if it refused to hire a Jew for its pulpit. In 1972, still the heyday of civil rights reforms, Congress expanded the statutory exemption to apply to virtually all employees of religious institutions, whether they serve in clergy positions or not. The Free Exercise Clause demands this broad protection, and in 1987, the Supreme Court unanimously upheld the Title VII exemption as constitutional.[35]

This well-established law has now become a central feature of the opposition to charitable choice; so much so that the interest groups who have joined together to fight charitable choice over the last few years have called themselves the "Coalition Against Religious Discrimination" and decry the fact that this initiative will "turn back the clock on civil rights."

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[31] Some have suggested that allowing a beneficiary to opt out of the faith-related portions of the faith-based agency's program while being entitled to partake of the secular portions of the program is an appropriate safeguard. We believe this is insufficient. It would force beneficiaries to constantly assert their objection in contexts where that might be difficult, if not awkward. The best safeguard, in the view of the UOJCA, for the religious "objector" is to facilitate his or her participation in an acceptable alternative program as is provided in H.R.7 § 201(f)(1).

[32] A recent survey conducted by the Pew Forum on Religion and Public Life noted broad support for the faith-based initiative overall, but concerns over permitting religious social service providers to receive government funds while continuing to possess the right to hire on the basis of religion. At no point, however, was any information offered to the respondents apprising them of the limited nature of the exemption, *see below*, or its creation as part of the Civil Rights Act of 1964. *See*, http://pewforum.org/events/0410/report/topline.php3.

[33] Section 702 of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e-1, provides in relevant part: "This subchapter shall not apply . . . to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

[34] Religious institutions remain bound by prohibitions against employment discrimination on the basis of race, ethnicity and the like.

[35] *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327 (1987). The majority opinion assumed only "for the sake of argument" that the § 702 exemption as enacted in 1964, prior to its 1972 expansion by congress, was sufficient to meet the requirements of the Free Exercise Clause, 483 U.S. at 336, while Justice Brennan, joined by Justice Marshall, suggested that the broader exemption was also supported by Free Exercise requirements; he noted that "[r]eligion included important communal events for most believers. They exercise their religion through religious organizations, and these organizations must be protected by the [Free Exercise][C]lause." 483 U.S. at 341, quoting Laycock, *Towards a General Theory of the Religion Clauses*, 81 Colum.L. Rev. 1373, 1389 (1981).

In fact, what is happening here is savvy political gamesmanship, not substantive argument. These very same opponents have lost their argument for the strictest view of church-state separation in the courts and in Congress. After all, the charitable choice laws that I described earlier received bipartisan support in the face of their protestations. Thus, they have cast about for a more potent political argument, and have found it in invoking the evils of discrimination—something all Americans rightly oppose.

But the assumption underlying the opponents' assertion is that faith-based hiring by institutions of faith is equal in nature to every other despicable act of discrimination in all other contexts. This is simply not true.

In fact, in the incredibly diverse and fluid society that is America 2001, religious groups are increasingly open and reflective of that diversity. There are now black Jews, Asian Evangelicals and white Muslims and these trends will only increase.[36] This is because, at their core, religious groups are supposed to care not about where you come from or what you look like, only what you believe.[37]

Religious institutions are thus compelled to ignore a person's heredity and champion his or her more transcendent characteristics.[38] Those who appreciate the role of religious institutions in America should resist the easy equation the opponents assert, for its implications are dangerous indeed. After all, a defining element of the civil rights era was a commitment to root out invidious forms of discrimination not only in public institutions, but in the private sector—at lunch counters, in motel rooms and on bus lines. If faith institutions' hiring practices are so terribly wrong, are we not obligated to oppose them however we can irrespective of whether they receive federal funds? If, as the critics suggest, your church and my synagogue are such bigoted institutions, why do we offer them the benefit of tax-exempt status? Why do we afford their supporters tax deductions for their contributions? Why do we hallow their role in society as we do?

There are other arguments to be made against the faith-based initiative over which we may reasonably differ. Some people may hold fast to a vision of stricter separation of church and state—even in the face of Supreme Court decisions to the contrary, while others may believe that the best way to serve Americans in need is solely through government agencies. We ought to vigorously debate these points as we have at this hearing. But slandering our sacred institutions with the charge of bigotry is unacceptable and must be ruled out of bounds.

A second rejoinder, with regard to the specific goals of this policy initiative, is important as well. If the goal of charitable choice is to leverage the unique capacities of faith-based providers with government grants, to force them to dilute their religious character is the same as saying you don't believe in the whole enterprise.[39] The critics, obviously do not, but we believe that, carefully considered and properly structured, expanding the partnership between government and faith-based social service agencies is a critical component of a strategy to bring new solutions to America's social welfare challenges.

Conclusion

At the end of the day, the debates surrounding the faith-based initiative come down to questions of cynicism versus hope. The cynics see a slippery slope down every path; some see deeply religious people as untrustworthy—incapable of following regulations and perpetually plotting to proselytize their neighbor, while others see every civil servant as a regulator lacking restraint just waiting to emasculate America's religious institutions.

But if we set our minds—and our hearts—to it, we can find a way to be more hopeful. After all, what this is really about is bringing some new hope and some real help to people in need through a new avenue.

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[36] *See* Diana Eck, A New Religious America, (Harper-Collins, 2001).

[37] Secular groups that are ideologically driven—from liberal to conservative—function in a similar manner and enjoy an analogous constitutional protection for their hiring practices under the freedom of expressive association, also recognized under the First Amendment. Thus, even though Planned Parenthood may receive government grants, it cannot be compelled to hire prolifers.

[38] Of course, one cannot overlook the fringe groups such as the Church of the Creator and Aryan Church that propound a "theology" of racial and ethnic hatred and hold themselves out as "religions." They are despicable and give mainstream religions a bad name. But we don't generally make our public policy decisions on the basis of the radical extremist; we afford everyone the freedom of speech even though it will benefit the neo-Nazi or the flag-burner. This approach should not be abandoned here.

[39] Again in Vice President Gore's words, "the religious character [of these organizations] that is so often the key to their effectiveness." Speech to Salvation Army. *See also*, Jeffrey Rosen, *Religious Rights*, The New Republic, February 26, 2001.

Chairman HERGER. Thank you very much, Mr. Diament.

And now we will hear from Brent Walker, executive director of the Baptist Joint Committee on Public Affairs.

Mr. Walker.

STATEMENT OF J. BRENT WALKER, EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, AND ADJUNCT PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER

Mr. WALKER. Thank you, Mr. Chairman, for this opportunity to testify on a matter as important as religious liberty and the separation of church and State.

I am both a lawyer and ordained Baptist minister. I also serve as adjunct professor of law at Georgetown University Law Center, where I teach a seminar in church-State relations. But today, I speak only on behalf of the Baptist Joint Committee.

The Baptist Joint Committee is 65 year-old group that serves 14 different Baptist bodies, focusing exclusively on matters relating to religious liberty and the separation of church and State.

We take seriously both religion clauses in the First amendment—No Establishment and Free Exercise—as essential guarantors of what we think is God-given religious liberty.

The Baptist Joint Committee joins others in applauding President Bush's recognition of religion's vital role in addressing social ills, but we believe religion will be harmed, not helped, by redirecting billions in government money to fund pervasively religious enterprises.

So we oppose charitable choice and Title II of H.R. 7, not because we are against the delivery of faith-based social services but because we desire to protect religious liberty.

The problems with charitable choice are many and let me name several of them.

First of all, charitable choice is unconstitutional. It promotes religion in a way that breaches the wall of separation between church and State. The Supreme Court has long said that government financial aid to pervasively religious organizations, even ostensibly for secular purposes, violates the Establishment Clause of the First amendment.

And with all due respect to my friend Nathan Diament, I think there is a big difference between the Good News case, which simply said that government must accommodate private religious speech, between that and actually advancing a religious practice and message by paying for it.

Second, charitable choice results in excessive entanglement between government and religion. It is an iron law of American politics that what government funds, government regulates. And normally that is a good thing, to provide for accountability of tax dollars. But it raises serious concerns when government becomes entangled in the affairs of religion.

This is what a Virginia pastor friend of mine meant, I think, when he asked government not to give us any pats on the back,

for all too often, a friendly pat on the back by Uncle Sam turns into a hostile shove by Big Brother.

Third, charitable choice dampens religion's prophetic voice. Religion has historically stood outside of government's control, serving as a critic of government. Accepting government funding will create a dependency, however, on government.

Martin Luther King Jr. once said, "the church is not the master or the servant of the State, but rather the conscience of the State. It must be the guide and the critic of the State, and never its tool."

The conscience? Absolutely. A tool? Heaven forbid.

Fourth, charitable choice authorizes religious discrimination in employment. It explicitly permits religious organizations to retain their Title VII exemption, even in a program substantially funded by governmental money.

Religious discrimination in the private sector is a welcomed accommodation of religion, which we support. But to subsidize it with tax dollars is an unconscionable advancement of religion, which we oppose.

Fifth, charitable choice encourages unhealthful rivalry and competition among religious groups. We enjoy religious peace and harmony in this country despite our dizzying diversity for the most part because government has had the good sense to stay out of religious affairs.

I agree with Representative Chet Edwards in his assertion that if he maliciously wanted to set out to destroy religion in America, he could think of no better way to do it than to put a pot of money with billions of dollars and let churches fight over it and then have the politicians pick and choose which religious group gets the money.

Simply put, charitable choice is the wrong way to do right. Thankfully, there are right ways to do it.

Government and religion may cooperate in the provision of social services in many ways that are good for government, good for religion, good for the taxpayers, and good for the people served.

First, houses of worship may continue to pay for social service ministries the old-fashioned way: with tithes and offerings and funds from other private sources. And government may and should encourage increased private giving. We applaud the provisions in H.R. 7 that expand the deductibility rules for charitable gifts for the 70 million Americans that do not currently itemize deductions.

Second, houses of worship may spin off religiously affiliated organizations to accept tax funds and provide social service ministries without integrating religion into the government-funded program. Religiously affiliated organizations can minister out of religious motivation and even make available some privately funded, separately offered, voluntarily attended religious activities, as long as they do not proselytize or require religious worship or discriminate on the basis of religion in hiring.

This option also has another benefit. It sets up a firewall against government regulation of and entanglement with the pervasively religious organization.

Third, government should lift onerous restrictions on houses of worship that unreasonably interfere with their ministries. Congress has already taken the lead by passing the Religious Land

Use bill last fall, which protects religious organizations from burdensome and unreasonable zoning laws and regulations. And I congratulate you for taking that bold step.

Finally, government and religious organizations—even pervasively religious ones—may carefully cooperate in creative, nonfinancial ways. government may tout the good works that religious organizations do, make referrals when appropriate, share information, and invite religious providers to serve on government task forces.

In sum, these illustrations are just several of the ways in which we are able to forge a win-win situation in this debate. Social services can be delivered by religious organizations, the autonomy of houses of worship can be protected from government regulation, and the constitutional values that promote religious liberty, such as separation of church and State, can be preserved.

We all want to do what is right—to help those in need. Let's do it the right way.

Thank you.

[The prepared statement of Mr. Walker follows:]

Statement of J. Brent Walker, Executive Director, Baptist Joint Committee on Public Affairs, and Adjunct Professor of Law, Georgetown University Law Center

Thank you, Mr. Chairman and Members of the Subcommittee, for this opportunity to speak to you on a matter as important as religious liberty.

I am J. Brent Walker, executive director of the Baptist Joint Committee on Public Affairs (BJC). I am an ordained Baptist minister. I also serve as an adjunct professor of law at Georgetown University Law Center, where I teach an advanced seminar in church-state law. I speak today, however, only on behalf of the BJC.[1]

The BJC serves the below-listed Baptist bodies,[2] focusing exclusively on public policy issues concerning religious liberty and its constitutional corollary, the separation of church and state. For sixty-five years, the BJC has adopted a well-balanced, sensibly centrist approach to church-state issues. We take seriously both religion clauses in the First Amendment—No Establishment and Free Exercise—as essential guarantors of God-given religious liberty.

No principle is more important to Baptists and the BJC than religious liberty and separation of church and state. At our best, we embrace the words of John Leland, a Virginia Baptist evangelist, who said over 200 years ago: "The fondness of Magistrates to foster Christianity has caused it more harm than all the persecution ever did." That is why for the last five years the BJC has fought "charitable choice" proposals to allow government to fund religious ministries.

The Problems With "Charitable Choice"

"Charitable choice"—a specific legislative provision that allows pervasively religious organizations, such as houses of worship, to receive government funds to subsidize social services—was first codified in 1996 as part of the welfare reform law.[3] Since then, Congress has passed three additional pieces of legislation containing "charitable choice" provisions.[4]

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[1] My curriculum vitae is attached. Neither I nor the BJC has received a federal grant or contract in the current or preceding two fiscal years.

[2] Alliance of Baptists, American Baptist Churches in the U.S.A., Baptist General Association of Virginia, Baptist General Conference, Baptist General Convention of Texas, Baptist State Convention of North Carolina, Cooperative Baptist Fellowship, National Baptist Convention of America, National Baptist Convention U.S.A. Inc., National Missionary Baptist Convention, North American Baptist Conference, Progressive National Baptist Convention, Inc., Religious Liberty Council, and Seventh Day Baptist General Conference.

[3] Personal Responsibility and Work Opportunity Reconciliation Act, Public Law 104–193 [1996].

[4] Community Services Block Grant Act, Public Law 105–285 [1998]; the children's Health Act of 2000, Public Law 106–310 [2000]; and the New Markets Venture Capital Program Act, Public Law 106–554 [2000].

For the first time since its inception five years ago, "charitable choice" has attracted national attention and scrutiny in the last few months.[5] The cause of the focused attention on this important topic is undeniably the attention given to "faith-based initiatives" by President George W. Bush. President Bush opened six federal offices of Faith-Based and Community Initiatives during his second week in office and has listed faith-based proposals, including the expansion of "charitable choice," as one of his top domestic priorities for his administration's first year.

We join others in applauding President Bush's recognition of religion's vital role in addressing social ills. But we believe religion will be harmed, not helped, by directing government money to fund pervasively religious enterprises.

So we oppose "charitable choice"—not because we are against faith-based social ministries—but because of our desire to protect religious freedom.

As the BJC has said for several years, "charitable choice" is the wrong way to do right.[6] The problems with "charitable choice" are many.

First, "charitable choice" is unconstitutional. "Charitable choice" promotes religion in ways that breach the wall of separation between church and state. The United States Supreme Court has long said that governmental financial aid to pervasively religious organizations, even for ostensibly secular purposes, violates the Establishment Clause of the First Amendment.[7] Pervasively religious entities (like houses of worship and parochial schools)—ones that are so fundamentally religious that they cannot or will not separate secular and religious functions—should be disqualified from receiving government grants because to fund them is to fund religion.

In a pervasively religious institution, the money that goes into one pocket goes into all of its pockets. Proponents of "charitable choice" who claim that the provision does not violate the separation of church and state point to a provision that bars government funds from paying for "sectarian worship, instruction or proselytization." However, this so-called "protection" is illusory since privately-funded sectarian worship, instruction or proselytization may operate throughout the tax-funded program. Even if one purports to pay for only the soup and sandwich through a government grant, these funds will necessarily free up other money to pay the preacher to bless the meal and deliver a sermon after dinner. In short, "charitable choice" unconstitutionally funds government services that are delivered in a thoroughly religious environment.

Second, "charitable choice" violates the rights of taxpayers. Just as funding pervasively religious organizations violates the First Amendment's Establishment Clause, taking my taxes to pay for your religious organization, or vice versa, violates the First Amendment's free exercise principles. Although the Supreme Court has never ruled that taxpayers have standing to assert a free exercise challenge to a funding scheme, I believe this is exactly what Thomas Jefferson had in mind when he said that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical."[8] It was over 200 years ago, and it is today. Government should not be allowed to use your tax money to promote my religion.

Third, "charitable choice" results in excessive entanglement between government and religion. It is an iron law of American politics that government regulates what it funds. This is what a Virginia pastor friend of mine meant when he asked government not to give us any "pats on the back." For all too often a friendly pat by Uncle Sam turns into a hostile shove by Big Brother.

Some regulation is outlined in the "charitable choice" legislation itself. As already mentioned, religious organizations that receive grants must make sure that the tax money is not used to pay for "sectarian worship, instruction or proselytization." It is a mystery how this legislative language will be enforced without a government officer standing in the sanctuary or poring over the church books, all the while making razor-thin theological judgments about what amounts to worship, instruction or proselytization. The "charitable choice" provision also requires religious organizations to be audited. If funds are segregated, then the audit would be limited to that

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[5] Contrary to some strains of popular opinion, cooperation between government and religion in the provision of social services is not a new idea. It predates this Administration's "faith-based initiatives" and even the 1996 "charitable choice" provision. This cooperation—often between government and religiously affiliated organizations that are not pervasively religious—demonstrates the right way for religion and government to partner in providing social services to those in need.

[6] Indeed, the BJC Board adopted a "Resolution on the Charitable Choice Provision in the New Welfare Act" as early as October 8, 1996.

[7] See *Bowen v. Kendrick*, 487 U.S. 589 (1988); *Roemer v. Board of Public Works*, 426 U.S. 736 (1976); *Hunt v. McNair*, 413 U.S. 734 (1973); and *Tilton v. Richardson*, 403 U.S. 672 (1971).

[8] "A Bill for Establishing Religious Freedom," Virginia Assembly, presented June 1779.

funding. If the funds are not so segregated, then government will be able to review all of the church's books.

The regulations set forth in the statute, however, are just the beginning. Other federal and state laws and regulations are triggered by the expenditure of federal tax money.[9] Even in cases where the religious organization agrees with the purpose of those laws and regulations, putting itself in a position to prove the compliance, itself, may be inimical to the autonomy of religious organizations. Ensuring compliance with rules and regulations will also drain the already overtaxed resources of the religious organizations providing services. I agree with the recent observation that churches will spend "more time reading the *Federal Register* than the Bible."[10]

Fourth, "charitable choice" dampens religion's prophetic voice. Religion has historically stood outside of government's control, serving as a critic of government. How can religion continue to raise a prophetic fist against government when it has the other hand open to receive a government handout? It cannot.

Dr. Martin Luther King, Jr., arguably the twentieth century's best example of religion's prophetic voice, warned:

> The church must be reminded that it is not the master or the servant of the state, but rather the conscience of the state. It must be the guide and the critic of the state, and never its tool. If the church does not recapture its prophetic zeal, it will become an irrelevant social club without moral or spiritual authority.[11]

But cannot religious organizations simply refuse government funding if it begins to harm their ministries? Yes, that is possible, but not likely. Government money may be irresistible to many churches on meager budgets. "Charitable choice" is a temptation of Biblical proportions. Once the money is taken, religious organizations can develop a dependency, not unlike an addiction to a drug. As conservative Christian commentator Timothy Lamer pointed out:

> Federal funding is a narcotic. Once addicted, recipients find it hard to live without. . . . Once Christian charities get used to collecting the subsidy, they will develop programs and goals premised on receiving government aid. The threat of losing such aid will be genuinely terrifying. They will surely fight such cuts and thus become what conservatives detest—recipients of federal grants lobbying for "more." Are Christian conservatives prepared for the sight of Christian charities lobbying to keep their place at the federal trough?[12]

Fifth, "charitable choice" authorizes religious discrimination in employment. Under Title VII of the Civil Rights Act of 1964, churches and some other religious organizations are granted an exemption to discriminate on the basis of religion in their hiring and firing practices. This exemption, when it applies to privately-funded enterprises, appropriately protects the church's autonomy and its ability to discharge its mission. For example, the Catholic Church must be free to exercise its religion by hiring only Catholics as priests. Courts have interpreted this exemption to apply not only to clergy, but also to all the religious organization's employees, including support staff, and not only to religious affiliation, but also to religious beliefs and practices.

"Charitable choice" explicitly allows religious organizations to retain their Title VII exemption, even in a program substantially funded by government money. Allowing religious organizations to discriminate in the private sector is a welcomed accommodation of religion; but to subsidize religious discrimination with tax dollars is an unconscionable advancement of religion that simultaneously turns back the clock on civil rights in this country.

Sixth, "charitable choice" encourages unhealthful rivalry and competition among religious groups. We enjoy religious peace in this country despite our dizzying diversity for the most part because government has stayed out of religion.

I have heard your colleague Representative Chet Edwards (D–TX) say on several occasions that if he maliciously wanted to destroy religion in America, he could think of no better way than to put a pot of money out there and let all the churches fight over it. I agree. "Charitable choice" is a recipe for religious conflict.

"Charitable choice" also drags religion into the ugly governmental appropriations process—the underbelly of democracy. Government does not have the money to fund every religious group in this country. It will have to pick and choose. All too often,

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[9] See generally, Rogers, Melissa, "The Wrong Way to Do Right: Charitable Choice and Churches," in *Welfare Reform and Faith-Based Organizations*; Derek Davis and Barry Hankins, Editors; J.M. Dawson Institute of Church-State Studies, Baylor University, Waco: 1999; pp. 64–67.

[10] Tanner, Michael in "Corrupting Charity: Why Government Should Not Fund Faith-Based Charities", CATO Institute, March 22, 2001.

[11] King, Jr. Martin Luther, *Strength to Love*, 1963.

[12] Lamer, Timothy in *The Weekly Standard*, January 15, 1996.

the majority faith in a particular area will prevail. But regardless of who wins, the process will not be pretty.

These six examples are just a few of the problems with "charitable choice." Simply put, "charitable choice" is the wrong way to do right. Thankfully, there are right ways to do right.

Doing Right the Right Way

In dealing with church-state disputes, I always try to find a workable, practical solution even while acknowledging constitutional tensions. Common sense often suggests the best way to proceed. There is a better way. Government and religion may cooperate in the provision of social services in many ways that are good for government, religion, taxpayers and the people served.

To help people of faith evaluate the many permissible ways to cooperate with government and avoid ill-advised financial partnerships between government and pervasively religious organizations, the Baptist Joint Committee, along with The Interfaith Alliance Foundation, has published a document entitled ***Keeping the Faith: The Promise of Cooperation, the Perils of Government Funding: A Guide for Houses of Worship***.[13] The guide first advises houses of worship to define the vision of their enterprise and then to determine whether government funding or other forms of cooperation will promote or detract from that vision. Keeping the Faith offers the following basic advice.

There are many ways for government and religion to cooperate in the provision of social services while protecting the quality of tax-funded services and the autonomy and integrity of religious organizations.

First, houses of worship may continue to pay for social service ministries the old-fashioned way: with tithes, offerings and funds from other private sources. Government may and should encourage increased private giving. Tax deductions and other incentives to foster corporate, foundation and individual giving are absolutely proper. The idea of encouraging corporate matching funds for employees' gifts to religious organizations and other charities is a good one.

Increasing private funding for charities may also be achieved through expanding deductibility rules for charitable gifts for the 70 million Americans—two-thirds of all taxpayers—that do not currently itemize deductions. This is one of President Bush's faith-based proposals with which there is room for widespread consensus and a positive impact on the nonprofit sector. According to some estimates, the provision found in Title I of the Community Solutions Act (H.R. 7) would increase annual charitable giving by more than $14.6 billion—a growth of 11% over 2000 giving levels—and encourage over 11 million non-itemizing taxpayers to become new givers.[14]

Government priorities may also encourage the private sector to fund the social service ministries of pervasively religious organizations. Recently, the Robert Wood Johnson Foundation announced plans to provide $100 million in grants to 3,000 religious programs for the disabled and the elderly.[15] Participants in a conference titled "Faith-Based Demonstration for High Risk Youth" recently reported that private foundations seem to be more generous with their funding of religious organizations since the launch of President Bush's "faith-based initiatives."[16]

Second, houses of worship may spin off religiously affiliated organizations to accept tax funds and provide social service ministries—out of religious motivation, to be sure, but without integrating religion into the government-funded programs. This option was available even before "charitable choice" was passed in 1996, and President Bush's faith-based initiative may inspire more religious organizations to explore this option. This way of delivering social services is exemplified by the good work of Catholic Charities, Lutheran Social Services and United Jewish Communities. Religiously affiliated organizations can continue to minister to the needs of people out of religious motivation and even make available some privately-funded, separately-offered religious activities so long as they do not proselytize, require religious worship or discriminate on the basis of religion in hiring or service providing. In this vein, Sharon Daly, who leads Catholic Charities, has said that, "We help others because we are Catholic, not because we want them to be."[17]

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[13] Please see BJC Web site, www.bjcpa.org, for the full text of *Keeping the Faith*.

[14] "Incentives for Nonitemizers to give more: An Analysis," PriceWaterhouseCoopers, January 2001.

[15] "$100 Million Pledged for 'Faith-Based' Aid," *The Washington Post*, March 28, 2001.

[16] "Private Sector follows Bush, funds faith-based programs," *The Washington Times*, April 19, 2001.

[17] Rogers, "The Wrong Way to Do Right," p. 78.

This option also has another benefit. It sets up a firewall against government regulation of and entanglement with the pervasively religious organization. As long as this is done through a separate organization, the regulation should not seep through the corporate distinction and infect that church or house of worship. The institution-wide application of some regulation mandated by the Civil Rights Restoration Act makes this protection even more critical.

It has been suggested by some that the process of setting up a separate religiously affiliated organization is too cumbersome for some houses of worship, particularly those that are small in size and resources. This suggestion ignores two important realities. First, many churches have successfully established separate religiously affiliated organizations and have operated within safeguards for decades. Second, setting up a distinct 501(c)(3) affiliate should be no more onerous than complying with governmental regulation in the first place. If the real concern is easing regulatory burdens, then the government, specifically the Internal Revenue Service, could provide technical assistance to religious and other community providers wanting to utilize this option.

Third, government should lift onerous restrictions on houses of worship that unreasonably interfere with their ministries. Congress and state legislatures should make sure that religion, including the provision of social services by religious organizations, is properly accommodated. Congress has already taken the lead by passing the Religious Land Use and Institutionalized Persons Act,[18] which protects religious organizations from burdensome zoning laws absent a compelling governmental interest. States should continue to pass state Religious Freedom Acts and localities should adopt zoning classifications that respect the autonomy of churches to run their social services with minimal restrictions.

Fourth, government and religious organizations—even pervasively religious ones—may carefully cooperate in creative, non-financial ways. Houses of worship can expand their influence in this area by partnering with other private organizations that have ties with the government. Government may also support the work of pervasively religious organizations without the use of taxpayer money. For example, government may tout the good work that religious organizations do, make referrals when appropriate, share information, and invite religious providers to serve on government task forces.

These illustrations are just some of the ways in which we are able to forge a win-win situation. They demonstrate that social services can be delivered by religious organizations, the autonomy of pervasively religious organizations can be protected from governmental regulation, and the constitutional values that promote religious liberty, such as separation of church and state, can be preserved.

Implementation of "Charitable Choice"

Although "charitable choice" is now law in four different federal statutes, very few pervasively religious organizations have elected to apply for government funds for their social service ministries. There are several reasons for this gap between legislation and implementation.

First, according to reports, only a handful of states have aggressively implemented "charitable choice" since 1996.[19] Most states have not instituted local regulations to assist pervasively religious organizations in applying for "charitable choice" grants.

Not surprisingly, Texas, the state that has most aggressively implemented "charitable choice," has also drawn the most litigation. Two of the five pending cases involving government funding of pervasively religious organizations are in Texas.[20]

Second, the Clinton Administration did not promulgate rules and regulations to implement "charitable choice." In fact, acknowledging the constitutional problems, the Department of Justice interpreted "charitable choice" to exclude pervasively religious entities from qualifying for receipt of government funds. In his signing statement for the Children's Health Act of 2000, President Clinton noted:

The Department of Justice advises, however, that this provision would be unconstitutional to the extent that it were construed to permit governmental funding of organizations that do not or cannot separate their religious activities from their substance abuse treatment and prevention activities that are supported by SAMHSA

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[18] Public Law 106–274 [2000].

[19] "Charitable Choice Compliance: A National Report Card," Center for Public Justice, September 28, 2000. Meckler, Laura, "Charitable Choice Rarely Utilized," Associated Press, March 19, 2001.

[20] *American Jewish Congress and Texas Civil Rights Project v. Bost* (W.D. Tex) 00–A-CA–528–SS; *Lara v. Tarrant County* (Texas Supreme Court).

aid. Accordingly, I construe the Act as forbidding the funding of such organizations and as permitting Federal, State, and local governments involved in disbursing SAMHSA funds to take into account the structure and operations of a religious organization in determining whether such an organization is constitutionally and statutorily eligible to receive funding.[21]

Third, and most instructively, churches and other pervasively religious organizations are hesitant to enter into contractual, financial relationships with the government. The state of Wisconsin received an "A" on Center for Public Justice's report card on compliance with "charitable choice," with the following explanation: "Gov. Thompson (R) made faith-based subcontracts a key performance indicator for W–2 (welfare) contractors in 1998." However, Thompson, now Secretary for Health and Human Services, recently noted that they only awarded government funds to one religious organization: "We opened it up and we didn't have as many applications as we thought there would be. We didn't pursue it any more. We made it available."[22]

The situation in Wisconsin is not an anomaly. Churches and other pervasively religious organizations understand the dangers of government funding of their social service ministries. Thousands of houses of worship are providing social services across the country, but they are doing it in the right ways—using private funds for their pervasively religious ministries or spinning off separate religiously affiliated organizations to accept government funds.

Conclusion

The Baptist Joint Committee and other religious groups oppose "charitable choice" not because we want to discourage the delivery of faith-based social services. On the contrary, we oppose it precisely because of our religious conviction and our desire to maintain maximum religious freedom in this country.

We all want to do right—to help those in need. Let's do it in the right ways.

Chairman HERGER. Thank you, Mr. Walker.

And now for our final witness, Samantha Smoot, executive director of the Texas Freedom Network in Austin, Texas. Ms. Smoot

STATEMENT OF SAMANTHA SMOOT, EXECUTIVE DIRECTOR, TEXAS FREEDOM NETWORK EDUCATION FUND, AUSTIN, TEXAS

Ms. SMOOT. Thank you, Mr. Chairman.

I appreciate the opportunity to be here today. My organization is a nonpartisan, nonprofit organization that provides research and public education. We are committed to promoting religious tolerance, protecting civil liberties, and maintaining the constitutional separation between church and State.

Over the course of the last year, we have engaged in a study of the effects of charitable choice in Texas.

After the Welfare Reform Act 1996, and under the leadership of then-Governor George W. Bush, Texas launched an aggressive campaign to implement charitable choice. In fact, we have been cited as one of the two most aggressive States in the country in implementing this program.

And now, as the national initiative is unfolding in much the same way as ours did in Texas, I hope that the record of this program's implementation is useful and can offer some insight into some of the difficulties in implementation of the proposed faith-based initiative.

[21] Clinton, President William J., Statement of the President, October 17, 2000, signing of H.R. 4365, the "Children's Health Act of 2000."

[22] Meckler, "Charitable Choice Rarely Utilized."

Our problems in Texas with charitable choice ranged widely, from some of the inherent difficulties that come with commingling State and religious funds, to the dangers incurred by relaxing basic health and safety standards in the name of protecting religious autonomy.

I want to tell you briefly about four programs in Texas. Each of these anecdotes illustrates a different set of problems with the implementation of charitable choice in Texas.

I would love to be able to talk to you more about the macro picture of implementation of this program, but one of our difficulties has been that because of the gray area involved in charitable choice and whether an organization is a religiously affiliated group or, in fact, a religious group where the funds go directly to a house of worship, there has been a remarkable lack of accountability of this program in our State.

In fact, I can tell you that there are 2,369 charitable choice programs in Texas, that the vast majority of them are either informal and not funded or they are religiously affiliated and had been funded all along. But I can't tell you either the number is 15 or 150 of new pervasively sectarian programs that are being funded.

So, let me talk to you about the programs that we have studied and do know about.

First, I want to mention a program called the Jobs Partnership of Washington County. This story illustrates a lot of the problems with the inherent lack of accountability of charitable choice.

This program is a job training program in a rural area. They won a small grant from the Texas Work force Commission to pay for $8,000 of their $20,000 budget. So this is a little program.

The idea of the program was to spend one night a week on job skills and one night a week on religious practice: worship, Bible study, hymns and so forth. In fact, what happened was that the religious aspects of the program permeated every single moment of the program.

For instance, on the very tangible end, funds were expended to purchase religious materials, such as Bibles. On the less tangible end, as a pervasively sectarian program, the program used funds to instill the notion that job training was preparing one for life as a Christian, that one was working not for one's boss but for the Lord, for instance.

These religious underpinnings informed every aspect of the program. And the religious message did seem to have a coercive effect on clients, one in three of whom reported that they felt pressure to join the program's host church.

Another problem with charitable choice that has emerged in Texas is the concern about preferential treatment being given to grant applicants based on their religious nature.

We had a very large grant given last year in Texas by our Department of Human Services. Two programs applied for this grant, one called Lockheed Martin, which has extensive experience all over this country with welfare-to-work programs, and another called the Institute for Responsible Fatherhood.

The Lockheed group brought decades of experience to the table. The Institute for Responsible Fatherhood brought very little. I could go through the various differences in their qualifications. I

won't, because it is in the written testimony. But they are numerous.

But most importantly, the Lockheed proposal was for $930,000 and the Institute for Responsible Fatherhood's proposal was for $1.5 million. Institute for Responsible Fatherhood got the grant. And I believe that, in this instance, the playingfield was not level.

And so one final word about the playingfield being level. There has been a lot of talk about removing "unnecessary barriers" which prevent religious institutions from serving those in need. Deregulation of these faith-based service providers is essential to the concept of charitable choice.

In the name of leveling the playingfield in Texas, we passed laws relaxing regulations for faith-based programs. The rationale for doing so, and H.R. 7 would allow this to happen, has been what we call the "faith factor." And I think we all agree that the "faith factor," the expressly religious component behind these religious programs, is part of what makes some of them effective for some people.

And there is also the belief that the "faith factor" should not be hampered by government oversight or government intrusion.

The problem is that, in the name of protecting the "faith factor," in Texas, what we have seen happen as a result is that we have lost basic accountability for funds and we have left some of the people in need without some very basic health and safety provisions.

I won't go through the two stories that I have for you. You may be familiar with the Roloff Homes——

Chairman HERGER. Our time has expired.

Ms. SMOOT. OK. Thank you very much.

Can I mention one, very quick last thing?

Chairman HERGER. Very quickly.

Ms. SMOOT. OK.

I just want you to know that 5 years into this program, in a State that has maybe covered the most ground in charitable choice, Texas lawmakers, the very ones who passed charitable choice legislation 4 years ago, have seen fit to roll back the alternative accreditation program, one of linchpins of charitable choice there, because it has just been a can of worms. So I just wanted to mention that to you.

[The prepared statement of Ms. Smoot follows:]

Statement of Samantha Smoot, Executive Director, Texas Freedom Network Education Fund, Austin, Texas

I am here today representing the Texas Freedom Network Education Fund, a nonprofit research and public education organization committed to promoting religious tolerance, protecting civil liberties and maintaining the Constitutional separation between church and state. Over the course of the last year, the Texas Freedom Network Education Fund has studied the effects of the 'charitable choice' program in Texas.

After the Welfare Reform Act of 1996, and under the leadership of Governor George W. Bush, Texas launched an aggressive campaign to implement 'charitable choice'.

The Texas model of 'charitable choice' took a two-pronged approach—diverting public funds to religious social service programs while simultaneously loosening regulations over these faith-based providers.

Now, as the national initiative unfolds in much the same way as its Texas predecessor, the state's five-year record offers insight into some of the difficulties in the application of the proposed faith-based initiative.

'Charitable choice' has proven to be a thorny proposition to implement. Problems with the faith-based initiative in Texas have ranged widely from the inherent difficulties that come with co-mingling government and church funds, to dangers incurred by relaxing basic health and safety standards, to problems posed by preferential treatment of applicants promoting specific belief systems.

Lack of Accountability

In Texas, we have seen a gross lack of standardized accounting procedures with 'charitable choice' monies. 'Charitable choice' grants are distributed directly to faith-based programs by state agencies, by those agencies' regional and local arms, and oftentimes, faith-based organization reissue funds to additional faith-based programs.

It has been widely reported that the two state agencies distributing funds to faith-based organizations have spent $10 million to date. However, the Texas Freedom Network Education Fund has identified an additional $3.5 million in grants to faith-based programs made through local government entities. Compiling data of faith-based or community-based programs that receive funding under 'charitable choice' initiatives has been very ineffective, as the state does not track the amount of 'charitable choice' funds granted. Furthermore, since the state does not differentiate between religiously-affiliated institutions that proselytize the people they are serving and those that do not, it is impossible to say how many proselytizing 'faith-based' program have been funded.

Lack of Demand

One of the difficulties in implementing 'charitable choice' has been wholly unexpected: neither proponents nor adversaries of the 'charitable choice' program would have predicted five years ago the surprising lack of interest in the program. Texas affords us a fine opportunity to examine this phenomenon, since the implementation of 'charitable choice' there was high profile and aggressive.

State records document 2369 faith-based organizations as participants in the Texas 'charitable choice' program. But the vast majority of these faith-based programs—at least 2000—are categorized as 'informal' contracts, meaning that they receive no public funds. Of those that are funded, most—such as Catholic Charities, the Salvation Army, and Lutheran Social Services—are religiously-affiliated programs that were already receiving government funds prior to establishment of the 'charitable choice' program.

In the 'charitable choice' program's efforts to lessen regulations on faith-based providers, the same lack of interest holds. There are 2008 faith-based child care and child placing facilities licensed by the state, compared to a paltry 8 who have elected to pursue the 'charitable choice' Alternative Accreditation option. After five years of aggressive outreach to the religious community, the only applicants represent a small constituency of groups that were unable to partner with the government by establishing a separate, not-for-profit entity and exercise prudent separation and standards.

Co-mingling of funds

Direct grants to these few religious groups have resulted in a lack of accountability over taxpayer funds and a violation of the Constitutional separation between church and state. In Texas, it has become apparent that there is simply no way to ensure that taxpayer funds are not co-mingled with church funds or spent on overtly religious activities.

The Jobs Partnership of Washington County won a state contract through 'charitable choice', receiving $8,000 of its $20,000 annual budget from the Texas Department of Human Services (DHS). The program's budget and curriculum show that Jobs Partnership of Washington County used state money to buy Bibles, and that the program focused a great deal of its efforts on Bible study. In fact, religion—specifically Christianity—permeated nearly every aspect of this program which is belied by the stated mission of the program to help clients "find employment through a relationship with Jesus Christ". Instructors readily acknowledged that they were trying to change students' beliefs and put Jesus at the center of their lives. They say that the religious and moral aspects of the curriculum were crucial in helping program participants change themselves from the inside out.

The religious message seemed to have a coercive impact on clients. About one-third of the participants said in the program evaluation that they felt pressure to join the host church, Grace Fellowship Baptist Church. Moreover, the only other job-training program in the area was located miles away in the next county, making it an implausible alternative for many of the low-income clients. Thus, for many area people looking for a job training program, their only viable option was the Jobs Partnership of Washington County.

Currently there is a lawsuit against the Jobs Partnership of Washington County and the Department of Human Services on appeal in the 5th circuit court of appeals. The outcome of the suit is of particular importance as DHS continues to fund faith-based programs, and as Jobs Partnership of Washington County has shown, it is incredibly difficult for programs to separate out the religious aspects of a program from the non-religious.

Preferential Treatment

Another difficulty in implementing 'charitable choice' is the subjective nature of the bidding process, which opens the door for inefficient and discriminatory practices by the state agencies and administrators distributing public funds. In another example of how 'charitable choice' has not been administered in a cost-effective or fair manner in Texas, there is evidence that preferential treatment has been given to religious providers in contracting opportunities with the state.

In response to a Texas Workforce Commission contract opportunity for fatherhood responsibility and employment initiatives, two nationally recognized groups—the Institute for Responsible Fatherhood (IRF) and Lockheed Martin (in conjunction with the Ray Marshall Center of the University of Texas at Austin)—submitted proposals.

The past track records and proposal costs for these two groups differed greatly. The Lockheed/ Ray Marshall group, combined, had placed over 125,000 individuals in jobs and currently has contracts with the State of Texas to provide services to 13 local workforce development boards. On the other hand, the Institute for Responsible Fatherhood had placed just 436 individuals, at a cost of $4.4 million. Additionally, Lockheed Martin had been working with state agencies since 1963, while the Institute for Responsible Fatherhood had only been working with state agencies since 1988 and a pilot project in Corpus Christi constituted the whole of their experience in Texas.

In the two-year period immediately preceding the proposal submissions, the Institute for Responsible Fatherhood served a total of 676 people. During that same period of time, just one of Lockheed Martin's 43 national programs served over 10,000 TANF recipients. Moreover, the program directors for the two proposed programs differed greatly in their experiences—the Lockheed Martin director had 20 years experience directing and managing social service programs, at many different levels, while the IRF's program directors had little experience in social service programs, one director's overwhelming resume experience was 12 years in property rental management.

For this grant request, the Institute for Responsible Fatherhood submitted a proposal for the maximum amount allowed for this particular bid—$1.5 million—and the Lockheed Martin group set forth a $930,000 proposal. The Institute for Responsible Fatherhood was awarded the Texas Work Force Commission grant.

The significant differences in measurable factors seemed to have been outweighed by subjective criteria that played into the evaluation of these two organizations. The Institute for Responsible Fatherhood grant proposal clearly indicated a faith-based teaching structure. The program mission and implementation steps described lay the groundwork for a prescribed spiritual path. On the other hand, the Lockheed Martin proposal presents a work program that speaks directly to job training and placement by practical application, without set spiritual elements.

The application of a spiritual philosophy on program participants appears to have played a greater role in determining the outcome of the grant decision than did the actual budget proposal or the experiences of the organizations. In this instance, the playing field was not level. Instead, the implementation of a faith-based philosophy outweighed the organizations track record, experience and cost effectiveness.

Relaxing Regulations

There has been much talk recently about removing 'unnecessary barriers' which prevent religious institutions from serving those in need. In the name of 'leveling the playing field' for faith-based programs, Texas passed laws relaxing regulations over faith-based programs. There is no question that eliminating basic health and safety safeguards made operations easier for a few faith-based programs. Unfortunately, this aspect of 'charitable choice' has also jeopardized the well-being of the people being served by these facilities.

Deregulation of faith-based service providers is essential to the concept of 'charitable choice', which strives to divert the flow of government funds to religious groups without forcing them to adhere to the government regulations they would otherwise be required to follow. While lessening regulations for faith-based programs is one of the most critical aspects of 'charitable choice', it is also the aspect that has received the least attention.

One rationale for removing health and safety regulations from these faith-based providers was that these groups seemed to be so effective. Nationally known drug treatment program, Teen Challenge, has encouraged this notion by claiming success rates ranging from seventy to eighty-six percent. But these figures dramatically distort the truth, as they represent the successful treatment rate of *only* those participants who do not drop out of the program before completion, which includes less than one-fifth (18%) of the total number of students who actually participated.

Another rationale for loosening regulations over faith-based programs has been what 'charitable choice' supporters call the "faith factor"—the expressly religious component that is the power behind these religious programs and—supporters believe—should not be hampered by government red-tape. In Texas, many of the faith-based service providers taking advantage of 'charitable choice' went a step further, expressing contempt and hostility towards basic health and safety laws. The architect of 'charitable choice', Marvin Olasky, articulated this hostility, held by the fringe element of religious social service providers, when he commented this Spring that faith-based drug treatment counselors "should not be forced to undergo 170 hours of training in a religion that is not their own."

Teen Challenge is a faith-based residential drug treatment program with three branches in Texas and more than 150 sites across the country—all of which rely solely on faith-based methods to treat drug abuse. The treatment program, which has no medical component, centers instead around prayer, Bible study, and religious conversion.

In 1995, the Texas Commission on Alcohol and Drug Abuse (TCADA) found the San Antonio branch of Teen Challenge in violation of state procedures, health and safety regulations and licensure standards. Program counselors did not meet training requirements and Teen Challenge disregarded state law by releasing confidential treatment records. Due to these infractions, Teen Challenge had their license suspended by the state in June of 1995. In response, then-Governor George W. Bush intervened on Teen Challenge's behalf and pushed through legislation to exempt religious-based drug treatment centers from state licensing and regulation.

Under Texas' new, permissive regulatory structure, faith-based drug treatment centers must simply register their religious status with the state to be exempt from virtually all health and safety measures required of the vast majority of treatment facilities, including: state licensing, employee training requirements, abuse and neglect prevention training, licensed personnel requirements, provisions protecting clients' rights, and reporting requirements of abuse, neglect, emergencies or medication errors.

To date, 102 faith-based drug treatment facilities have registered with the state under this system and their impact may have dangerous consequences in Texas.

Protecting Religious Autonomy Through Alternative Accreditation

Another alarming example of the dangerous consequences of 'charitable choice' is exemplified through the dramatic story of the Roloff Homes.

For three decades, the Roloff Homes—a group of faith-based homes for troubled teens in Corpus Christi, Texas—have been the subject of high-profile allegations of physical abuse and neglect. After the U.S. Supreme Court ruled that they must accept state licensing and regulation, the Roloff Homes closed down and moved to Missouri rather than accept state oversight in Texas.

In 1997, Roloff attorneys were the only witnesses to testify in favor of legislation to establish an alternative, private accreditation process in lieu of state licensing for religious childcare facilities. The first facility to apply for and receive accreditation from the Texas Association of Christian Child Care Agencies (TACCCA) was the Roloff Homes. In April 2000, serious allegations of abuse surfaced once again at the homes. Yet, within weeks of resulting arrests, TACCCA re-accredited the Roloff Homes.

In theory, Texas' Alternative Accreditation program for faith-based providers of childcare and child placement services was supposed to enforce the same standards as the state of Texas. In reality, the state is unable to force TACCCA to exercise proper oversight. Unless formal allegations of abuse and neglect are filed by TACCCA against a facility it accredits, the state has no authority to do site visits of alternatively-accredited facilities

The rate of confirmed cases of abuse and neglect at alternatively accredited facilities in Texas is more than 10 times that of state-licensed facilities. TACCCA's own documentation shows that they have not conducted proper oversight of the facilities they accredit. Moreover, TACCCA was remiss in its oversight role because it never conducted an unannounced inspection of its facilities, as required by state law.

As a buffer between faith-based organizations and the state, Alternative Accreditation protected the faith-based organizations from oversight, but left the children in their care vulnerable.

Conclusion

'Charitable choice' was conceived of by one Texan, Marvin Olasky, and aggressively implemented by another, Gov. George W. Bush. After five years of aggressively implementing government-funded faith-based programs in Texas, positive results have proven to be impossible to document or measure. Evidence points instead to a system that is unmanageable, unregulated, prone to favoritism and co-mingling of funds, and even dangerous to the very people it is supposed to serve. Sadly, Texas' efforts to fund religious activity have proven to be a treacherous enterprise for churches, taxpayers, and people in need alike.

So treacherous, in fact, that even the very legislators who once promoted 'charitable choice' in Texas have now abandoned the idea, choosing not to renew the 'Alternative Accreditation' plan this year. In the state that has moved the farthest along in the faith-based initiative experiment, Texas' move to shut down one of the lynchpins of 'charitable choice' signifies a dramatic rollback of this initiative.

Supporters of "charitable choice" point to Texas as a role model for the nation—and I agree with them. I urge you to consider Texas' record of difficulties in implementation and lack of demand for this program before moving forward. After five years of aggressive implementation in Texas, taxpayers have virtually no accountability over how their funds are spent, people in need have no guarantee that they will be delivered services that do not jeopardize their health and safety or violate their freedom of religion. The state lawmakers on the front lines of this program, having witnessed its troubled record, have begun to reverse the state's involvement in charitable choice.

Chairman HERGER. Thank you very much, Ms. Smoot.

Ms. SMOOT. Thank you.

Chairman HERGER. And I want to thank each of our witnesses for your patience. It has been a long day. Again, I thank you.

And with that, this Joint Committee on Human Resources and Select Revenue Measures stands adjourned. Thank you.

[Whereupon, at 2:29 p.m., the hearing was adjourned.]

[Questions submitted from Chairman Herger to the panel, and their responses follow:]

Indiana Family and Social Services Administration
Indianapolis, Indiana 46204

Wally Herger
Chairman, Human Resources Subcommittee
Ways and Means Committee
U.S. House of Representatives
Washington, DC 20515

Q. Why is Indiana one of only a handful of States that have taken the initiative to promote greater involvement in providing social services by the faith-based community?

A. One of the most significant events that contributed to the State of Indiana's early support of faith-based organizations' involvement in the provision of social services was the early implementation of welfare reform. Former Governor Evan Bayh implemented several waivers to the Aid to Families with Dependent Children (AFDC) program in June of 1995, long before the Personal Responsibility and Work Opportunities Reconciliation Act (PROWRA) 1996 became Federal law. As these waivers were implemented, Indiana experienced the largest cash assistance caseload decline in the country—a 38% decline between January 1994 and December of 1996. The hard-to-serve population became a more significant portion of the caseload and the State of Indiana actively sought to expand the pool of social service providers to include more community-based, neighborhood organizations that could address the extensive and diverse needs of the new cash assistance caseload. This focus blended well with supporting faith-based organizations' efforts to improve their provision of services to families in their communities. Therefore, in the fall 1999, Gov-

ernor Frank O'Bannon established FaithWorks Indiana to support faith-based and community-based organizations' ability to provide social services and access financial resources for those services.

Q. Several witnesses have raised concerns about charitable choice, for example, that it will lead to discrimination in hiring, or that beneficiaries will be forced to participate in sectarian activities, or that there will not be alternative providers available, especially in rural areas. Has the implementation in Indiana substantiated any of these concerns? What would you say to those who argue that charitable choice provisions should be repealed?

A. Thus far, Indiana has not received any complaints regarding the promotion of sectarian activities or discrimination in hiring. Provider contracts include language that prohibits the use of TANF funds for sectarian activities, and monitoring is conducted to ensure that the provider is in compliance with all contract provisions. Clients are informed of their choice between faith-based and non-faith-based providers when developing their Self-Sufficiency Plan with their Family Case Coordinator. They are always offered a choice of providers that offer services in their community.

Although FaithWorks Indiana is a relatively new initiative, we have found the process of promoting the availability of funds for social services to faith-based and community-based organizations within the scope of our normal performance-based contracting and monitoring procedures to be working well.

Q. One of the key issues with charitable choice relates to outcomes, especially whether we can determine if faith-based organizations do a better job of providing services than traditional providers. Are you conducting any studies that would add to our knowledge on this issue regarding charitable choice programs operating in Indiana?

A. Our faith-based providers are still completing their first year of contracts; therefore, it is impossible to provide an assessment of their performance. They do, however, compete equally in our procurement process and are chosen on the same criteria as all other providers—ability to deliver quality services, organizational capacity, and so forth. In addition, their reimbursement for services is based on performance-based contracts. For these reasons, we believe their performance will meet our standards. Although the State of Indiana is not conducting a study of the performance of faith-based providers in comparison to traditional providers, researchers at Indiana University and the University of Massachusetts are conducting a 3-year study regarding charitable choice implementation that will include three states—Indiana, Massachusetts and North Carolina.

Q. How have faith-based providers responded to the performance requirements and oversight from the State? Do they have the capacity to provide the outcome information the State requires?

A. The State of Indiana has not experienced any significant difficulties in faith-based providers' ability to comply with performance-based contracting. Faith-based and community-based organizations that express an interest in government funding receive technical assistance that includes detailed information regarding administrative compliance issues, such as reporting requirements and fiscal accountability, etc. The State of Indiana has a responsibility to be accountable with taxpayer dollars and to provide quality services to families in a safe, non-discriminatory environment. Organizations are made aware of these requirements so that they may determine whether public funding is the right source of support for their services.

Some organizations have the capacity to handle these requirements, others do not; however, if they are to enter into a contractual arrangement with the State to provide social services, they must comply with the requirements required by the funding source. If they decide that public funding is not the right match for their organization, technical assistance also may point them to private sources of funding and resources for grants from foundations and other private entities. Technical assistance is offered to interested organizations and detailed information about requirements is given up front to ensure that the highest quality services are made available to our families.

Sincerely,

Katherine Humphreys
Secretary

Nueva Esperanza
Philadelphia, Pennsylvania 19140
June 28, 2001

Hon. Wally Herger
Chairman
Committee on the Ways and Means
Subcommittee on Human Resources
US House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to testify before your Subcommittee on H.R. 7. It was an honor for me to participate then, as it is now to respond to your four questions.

I note that religious preference is not a concern in your hiring. Do you know whether that is true for most faith-based community providers?

Religious preference is not at the focus of our hiring. While I cannot speak for all faith-based groups, nor do I have research to support my observations, I do know that for many faith-based providers religious preference is not a concern. Accommodation and respect for the general principles, ethos and mission is. A genuine commitment for the service that is going to be provided and an examination for compatibility, respect for the religious aspects of the community are important. For example, we have at least three Muslims on a staff of 36 people. Since we do not proselytize and since they respect the ethos of our service and moral values, their religious preference is not an issue. If a staff person were alienated from or did not believe in our mission of service, or if they were consistently disrespectful of the values we hold dear, the core values of Western—European civilization, we could not have them on a staff motivated to serve those less fortunate.

What practices if any, would you change if H.R. 7 were passed and were signed into law?

Not many practices would change; rather we would be able to maintain our integrity without having to fear persecution. We have a religious symbol in our conference room and we have three other visible signs of our faith in a 30,000 square foot office. Today, these items are not visible to the general public. We would be allowed to move them into a more prominent setting.

Would you seek to expand the type or breadth of the social services you currently provide? Which ones? Would you hire new individuals to perform these services? Who would you be most likely to hire—individuals from your community, for example?

Our services would expand in several particular areas: work with delinquent youth, more services to children after school and weekends is a service area we could augment. Access to programs at the Department of Labor will assist us in development of programs and service to the unemployed in our community. Justice programs would assist us in augmenting prison visitation and service programs that already exist, as well as work with the children and spouses of those in prison. Health and Human Services could be accessed to unleash the potential of hundreds of volunteers to address issues of health education in poverty communities throughout the United States attacking diabetes and asthma the major health issues that effect Latino communities. In many cases there would be new people hired, to either coordinate volunteers, provide training, direct service and to direct and manage programs.

Nueva Esperanza prefers to hire people from the local geographic community. We currently advertise all available positions first in a community newspaper with 250,000 circulation and then in the Philadelphia Daily News with its 2 million circulation.

I note your point that if charitable choice is expanded "We can do a better job of reaching those that Federal programs are designed to serve. I know we can do better because we have done so already." Please provide us with examples of what you mean?

Government currently funds local entities to provide housing counseling. In our community, Nueva Esperanza has served more families in housing counseling more efficiently than the city. Nueva Esperanza has taken more children from our community to overnight summer camp with a program tailored to the needs of our local children for fewer dollars than local government has in their program. Nueva

Esperanza has built new homes for low-income home ownership, better constructed homes and financed for lower cost than both the city and private for-profit companies have in our community. We educate children through our public charter high school for less money with better results than the local public school. Nueva Esperanza provides private college education at a lower cost than any other private college in the city. We are only one of two institutions that provide college courses in Spanish transitioning students into English. All these services are performed at higher standards and lower cost than other providers—local government, other non-profits or private agencies.

You state (page 4) "It is faith-based 501(c) 3 agencies like Nueva—founded by clergy, run by a pastor, connected to and trusted by the community—that have the best chance at succeeding where traditional agencies have failed." Please tell us what you mean by how "traditional agencies have failed". Is one issue here that, unless we open these programs to charitable organizations, certain essential services simply won't be offered, because government cannot or will not offer those? What are some examples?

The issue is not that government cannot or will not offer certain services. The issue is that the services provided do not reach those in our community they intended to serve, hence the "traditional agencies have failed." Millions of dollars have been targeted for the Hispanic community by the Federal government for poverty reduction and a variety of social services. Many of those dollars never reach the agencies best equipped to address the problems of the Hispanic community the faith-based institutions and congregations that are best networked to neighborhood families. The result is that the problems of poverty remain untouched—and millions of dollars misspent or spent inefficiently.

That traditional agencies don't work is evidenced in Philadelphia's Hispanic community where we have a 40% male high school drop-out rate and a 38% teen pregnancy rate. Our charter high school is a national model but only 2 years old and can only accommodate 200 students in a community desperate to reach thousands. We are hopeful that the President's initiative will allow Nueva's proposed abstinence program will be funded so we can begin to address the teen pregnancy issue

Traditional social service agencies claim to represent the Hispanic communities yet they are rarely community based and have few contacts in the community. The role of the Hispanic congregation in America is at its core as it is one of the few, if not the only, institution that permeates all Hispanic communities and neighborhoods. The resources for fighting poverty are distributed around us to external neighborhood social-service agencies and local government, while we (Hispanic faith-based and community based-organizations) are rarely empowered by these resources directly. Despite millions of dollars invested to create substantive improvement in our neighborhoods, we are overlooked though we are many times in the best setting to develop and implement programs and community improvement strategies.

Congregations because of their levels of trust can serve as springboards for substantive individual and neighborhood improvement. Instead universities, hospitals, research and think tanks and monolithic national intermediaries receive the funding to develop and implement their programs targeted for our communities—communities of which they have limited if any direct experience and understanding. Nueva Esperanza has been "called in" dozens of times to assist groups working on such Federally funded projects—colleges, universities, external (non—community based) non-profits and local government. These are feeble attempts to get us to provide free consultant services for a project that was funded to serve our community. This is extremely frustrating as we provide what expertise we can in frequently ill-conceived studies and programs that, if we had been involved from the beginning, could provide real assistance or solid information.

There is an unfortunate pattern that exists of non-profit agencies competing for funds first and learning about an issue once the funds are awarded. Agencies who have received funds in the past are often rewarded with new program funds whether or not they have experience with the particular issue or community or type of service. A good grant writer can secure funds for new programs based on an agency's track record in other areas. Often, the faith—based community is called in to assist in the development and performance of the service—as volunteers. These programs frequently suffer from a lukewarm commitment from the serving institution as they lack appreciation of the issue being studied. It is unfortunate that this cycle continues as a result of government regulation that does not allow agencies to compete because they are faith-based or community-based organizations. H.R. 7 and the President's faith-based initiative has the potential to change all this—and to sincerely address the issues of poverty facing our communities.

We have shown that we have the capacity to put together proposals, hire the professionals and be accountable for results. We have to provide positive results or we

answer to our neighborhood, external institutions have traditionally answered to no one. H.R. 7 is an opportunity to allow for the empowerment of poverty communities.

Thank you, again, Chairman Herger for this opportunity to respond to your questions.

Respectfully submitted,

Reverend Luis Cortes, Jr.
President

Texas Freedom Network Education Fund
Austin, Texas 78767
June 28, 2001

Hon. Wally Herger
Chairman, Subcommittee on Human Resources
U.S. House Committee on Ways and Means
B–317 Rayburn Building
Washington, DC 20515

Dear Chairman Herger:

I appreciate the opportunity to continue our dialog with your Committee on H.R. 7. I have enclosed the following information in response to your questions regarding my testimony before your Committee.

1. Have you looked at other contractors for the same programs?

By the very nature of the 'charitable choice' initiative, many of the problems mentioned in my testimony—government funds being spent on religious activities and materials, preferential treatment given to faith-based programs in government contracting opportunities, and loosened regulations over faith-based programs—are unique to faith-based contractors. Thus, there is no such comparison for these problems among non-faith-based contractors.

The Texas Freedom Network Education Fund has examined comparative data on secular and faith-based providers of childcare and child placement services—the only area where adequate comparative data is available.

As part of 'charitable choice' in Texas, faith-based childcare facilities were allowed to pursue alternative, private accreditation in lieu of state licensing. Data on the faith-based childcare providers that pursued alternative accreditation provides ample evidence that these providers are plagued by more problems than state-licensed facilities.

The Texas Department of Protective and Regulatory Services (TDPRS) has investigated 1,868 complaints against the 34,165 state-licensed childcare and child-placing facilities operating in Texas, resulting in one complaint for roughly every 18 state-licensed facilities.

TDPRS has received and investigated 4 complaints against the 8 alternatively accredited childcare facilities in Texas—one complaint for every two alternatively accredited facilities.

2. What in H.R. 7 or existing charitable choice laws would allow these providers to be "deregulated"? Isn't it correct that States could loosen regulations on faith-based providers on their own even without the passage of any Federal legislation?

States may currently act alone to deregulate faith-based providers; this is precisely what then-Governor Bush led the state of Texas to do. Further, President Bush's Executive Order establishing the White House Office of Faith-Based and Community Initiatives declared that half the mission of that office was to offer "regulatory relief" for faith-based providers, and he has already directed five Federal agencies to compile lists of regulations that may be considered "barriers to the participation of faith-based" providers. President Bush has made clear his intention to lessen these regulations, much like his effort in Texas.

In this context of unfolding deregulation at both the Federal and the state levels, H.R. 7 proposes to radically expand the number and scope of faith-based programs eligible for public funds.

Moreover, H.R. 7 loosens regulatory efforts in two concrete ways.

First, H.R. 7 explicitly loosens some regulations over faith-based providers to which they have been subject in the past. H.R. 7 will expand the 'charitable choice' initiative to additional areas of the government's social service programs, thus loosening regulations for religious institutions in several new departmental grant opportunities. For example, a religious group will no longer have to establish a 501(c)(3)

in order to receive grants under the Work force Investment Act 1998, Child Care Development Block Grant Act 1990, or Juvenile Justice and Delinquency Prevention Act 1974. Whereas, to contract with Federal agencies under these programs today, religious institutions must establish a separate 501(c)(3). Thus, faith-based social service providers will be subject to fewer regulations than they are today if H.R. 7 is enacted into law.

Furthermore, H.R. 7 grants faith-based providers additional regulatory exemptions with which their secular counterparts must comply. H.R. 7 expands the Title VII religious exemption by adding new language to specifically authorize discrimination based not only on "religion", but also on an employer's "religious practices"—such as not hiring unmarried, pregnant women or gays and lesbians. This further loosens a regulation for faith-based providers that other, non-faith-based providers must abide by.

Based on our experience in Texas, it is clear that loosening regulations over faith-based providers is inherent in 'charitable choice'. Given that H.R 7 would lift regulations over religious institutions that they are currently required to follow if contracting with the government, it too is infused with the idea of deregulation. Furthermore, unless it explicitly directs Federal agencies and states not to loosen regulations over faith-based programs, H.R. 7 is a green light for further deregulation.

3. Since the law [on commingling funds and accounting for funds] is specific, are you saying that religious providers don't or won't obey it?

We appreciate that H.R. 7 specifically addresses the issue of commingling government and church funds. However, we've seen in Texas that there are distinct "commingling" problems presented by charitable choice—one of which is not explicitly addressed in this legislation. "Commingling" can refer not only to placing government and church funds in the same bank account, but also to spending government funds—whether segregated or not—on religious activities or materials.

H.R. 7 explicitly prohibits the first type of "commingling". Yet in Texas, the prohibition against "commingling" was clearly violated when taxpayer funds were spent on religious materials and on religious practice. I referred in my written testimony to clear evidence of commingling at one 'charitable choice' funds recipient in Texas, the Jobs Partnership of Washington County.

The very nature of—and, in many cases, the primary reason for the success of—faith-based programs is that the religious component permeates all aspects of the program, making it often impossible to separate funds in a way that guarantees taxpayer dollars will be spent only on secular activities. Consider the mission statement of the Jobs Partnership of Washington County: "find employment through a relationship with Jesus Christ." When a program is, as the Supreme Court has termed it, 'pervasively sectarian', there is often no untangling of the activities infused with religious practice from those that are not.

Regarding the use of standardized accounting procedures, again we commend the authors of H.R. 7 for their attempt to address this issue. However, our experience in Texas shows that this provision in H.R. 7 will not be adequate to address the problems that arise. Our experience with new, community-based service providers that take over a role traditionally performed by the government—such as faith-based groups providing social services or community-run charter schools providing public education, for example—is that these community-based institutions are often not equipped with the training and expertise necessary to meet adequate reporting and accounting requirements. Based on the Texas record, it is not our opinion that religious groups will intentionally or maliciously overstep legal boundaries, but that a lack of training and expertise in these matters will result in violations of the law.

H.R. 7 does not provide for or require any training of personnel at these faith-based programs that would be receiving government funds. History shows that this training is necessary to prevent commingling of funds, improper use of taxpayer dollars and inadequate accounting of those funds.

H.R. 7 also lacks any penalty for noncompliance with the bill's directive to segregate funds and use adequate accounting measures.

As our testimony was intended to share the Texas experience with the committee, we stand firm by our warning of the problems inherent in the 'charitable choice' concept that lend themselves to thorny implementation issues.

Thank you again for the opportunity to testify, and for your work on this important issue. If there is any way we may be of assistance on this issue as the Committee continues to debate this important legislation, please contact me.

Sincerely,

Samantha Smoot
Executive Director

[Submissions for the Record follow:]

Statement of Carl H. Esbeck, Senior Counsel to the Deputy Attorney General, U.S. Department of Justice

INTRODUCTION

By letter of May 22, 2001, the House Subcommittee on the Constitution, Committee on the Judiciary, invited the views of the U.S. Department of Justice concerning statutory and constitutional issues raised by § 1994A (charitable choice) of H.R. 7, The Community Solutions Act of 2001. Thank you for the invitation. This document is the Department's response to the Subcommittee's letter.

Charitable choice is already part of three federal social service programs. The provision first appeared in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),[1] two years later it was incorporated into the Community Services Block Grant Act of 1998,[2] and last year it was made part of the reauthorization of funding for the Substance Abuse and Mental Health Services Administration (SAMHSA).[3] Each of these programs has the overarching goal of helping those in poverty or treating those suffering from chemical dependency, and the programs seek to achieve their purpose by providing resources in the most effective and efficient means available. The object of charitable choice, then, is not to support or sponsor religion or the participating religious providers. Rather, the goal is secular, namely, to secure assistance for the poor and individuals with needs, and to do so by leveling the playing field for providers of these services who are faith-based.

Charitable choice is often portrayed as a source of new federal financial assistance made available to—indeed earmarked for—religious charities. It is not. Rather, charitable choice is a set of grant rules altering the terms by which federal funds are disbursed under existing programs of aid. As such, charitable choice interweaves three fundamental principles, and each principle receives prominence in the legislation.

First, charitable choice imposes on both government and participating FBOs the duty to not abridge certain enumerated rights of the ultimate beneficiaries of these welfare programs. The statute rightly protects these individuals from religious discrimination by FBOs, as well as from compulsion to engage in sectarian practices against their will.

Second, the statute imposes on government the duty to not intrude into the institutional autonomy of faith-based providers. Charitable choice extends a guarantee to each participating faith-based organization [FBO] that, notwithstanding the receipt of federal grant monies, the organization "shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs."[4] In addition to this broadly worded safeguard, there are more focused prohibitions on specific types of governmental interference such as demands to strip religious symbols from the walls of FBOs and directives to remake the governing boards of these pro-

[1] 42 U.S.C. § 604a (Supp. 1996). Charitable choice appeared as § 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104–193, 110 Stat. 2105, 2161 (1996). Section 604a applies to two federal revenue streams: Temporary Assistance to Needy Families and Welfare to Work monies. Welfare to Work funds were made subject to PRWORA in the 1997 Balanced Budget Act.

[2] 42 U.S.C. § 9920 (Supp. 1998). Charitable choice appeared as § 679 of the Community Services Block Grant Act, which was Title II of the Coats' Human Services Reauthorization Act of 1998, Pub. L. No. 105–285, 112 Stat. 2702, 2749 (Oct. 27, 1998).

[3] 42 U.S.C. § 300x–65 (Supp. 2000). SAMHSA concerns expenditures for substance abuse treatment and prevention under Titles V and XIX of the Public Health Services Act. The charitable choice provision pertaining to SAMHSA, signed by President Clinton on October 17, 2000, appeared as Title XXXIII, § 3305 of the Children's Health Act of 2000, Pub. L. No. 106–310, 114 Stat. 1212 (2000). SAMHSA substance abuse treatment and prevention expenditures were again made subject to a charitable choice provision in the Community Renewal Tax Relief Act of 2000, signed by President Clinton on December 21, 2000. *See* 42 U.S.C. § 290kk (Supp. 2000). This Act was incorporated by reference in the Consolidated Appropriation Act of 2001, Pub. L. No. 106–554.

[4] 42 U.S.C. § 604a(d)(1). The parallel subsection in H.R. 7 is § 1994A(d)(1).

viders.[5] A private right of action gives ready means of enforcement to these protections of institutional autonomy.[6]

Third, the statute reinforces the government's duty to not discriminate with respect to religion when determining the eligibility of private-sector providers to deliver social services.[7] In the past, an organization's "religiosity," obviously a matter of degree not reducible to bright—lines, was said to disqualify providers found to be "pervasively sectarian." That inquiry was always fraught with difficulties. Now, rather than probing into whether a service provider is thought to be "too religious" as opposed to "secular enough," charitable choice focuses on the nature of the desired services and the means by which they are to be provided. Accordingly, the relevant question is no longer "Who are you?" but "What can you do?" So long as a provider is prepared to operate in line with all statutory and constitutional parameters, then an organization's degree of "religiosity" is no longer relevant.

Because they are a useful way of framing the most pertinent statutory and constitutional questions, we expand on these three principles below. Moreover, as will be discussed, the Department of Justice recommends certain amendments to § 1994A of H.R. 7.

I. The Rights of Beneficiaries

In programs subject to charitable choice, when funding goes directly to a social service provider the ultimate beneficiaries are empowered with a choice.[8] Beneficiaries who want to receive services from an FBO may do so, assuming, of course, that at least one FBO has received funding.[9] On the other hand, if a beneficiary has a religious objection to receiving services at an FBO, then the government is required to provide an equivalent alternative.[10] This is the "choice" in charitable choice. Moreover, some beneficiaries, for any number of reasons, will inevitably think their needs better met by an FBO. This possibility of choosing to receive their services at an FBO is as important a matter as is the right not to be assigned to a religious provider. There is much concern voiced by civil libertarians about the latter choice, whereas the former is often overlooked. Supporters of charitable choice regard both of these choices—to avoid an FBO or to seek one out—as important.

If a beneficiary selects an FBO, the provider cannot discriminate against the beneficiary on account of religion or a religious belief.[11] Moreover, the text's explicit protection of "a refusal to actively participate in a religious practice" insures a beneficiary's right to avoid any unwanted sectarian practices.[12] Hence, participation, if any, is voluntary or noncompulsory. When direct funding is involved, one recent court decision suggested that this "opt-out" right is required by the first amendment.[13] Beneficiaries are required to be informed of their rights.[14]

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[5] 42 U.S.C. § 604a(d)(2). The parallel subsection in H.R. 7 is § 1994A(d)(2).

[6] 42 U.S.C. § 604a(i). The parallel subsection in H.R. 7 is § 1994A(l).

[7] 42 U.S.C. § 604a(b) and (c). The parallel subsection in H.R. 7 is § 1994A(c)(1).

[8] Charitable choice contemplates both direct and indirect forms of aid. 42 U.S.C. § 604a(a)(1). This is most apparent in H.R. 7 by comparing the subparts of § 1994A(g). If the means of funding is indirect, as with, for example, federal child-care certificates, then choice is intrinsic to the beneficiary's selection of a child care center at which to "spend" his or her certificate.

[9] It may be that on some occasions no FBOs successfully compete for a grant or cooperative agreement. This is to be expected. Charitable choice is not a guarantee that resources will flow to FBOs. Rather, charitable choice guarantees only that FBOs will not be discriminated against with respect to religion.

[10] 42 U.S.C. § 604a(e)(1). The parallel subsection in H.R. 7 is § 1994A(f)(1). The alternative may be another provider not objectionable to the beneficiary, or the government may find it more cost efficient to purchase the needed services on the open market.

[11] 42 U.S.C. § 604a(g) (FBOs may not discriminate against beneficiaries "on the basis of religion [or] a religious belief"). The parallel subsection in H.R. 7 is § 1994A(g)(1).

[12] 42 U.S.C. § 604a(g) (FBOs may not discriminate or otherwise turn away a beneficiary from the organization's program because the beneficiary "refus[es] to actively participate in a religious practice"). Thus, a beneficiary cannot be forced into participating in sectarian activity. For reasons not apparent, § 1994A(g)(1) of H.R. 7 omits this right of beneficiaries to avoid unwanted sectarian practices. As will be noted below, the Department of Justice recommends an amendment to correct this omission.

By virtue of § 604a(j), any such sectarian practices must be privately funded in their entirety and, hence, conducted separate from the government-funded program. *See* Part III, below, discussing the need to separate sectarian practices from the government-funded program.

[13] *See* DeStefano v. Emergency Housing Group, Inc., 2001 WL 399241 * 10–12 (2d Cir. Apr. 20, 2001) (dictum expressing belief that it would be violative of Establishment Clause should beneficiaries of state-funded alcohol treatment program be compelled to attend Alcoholics Anonymous sessions, such sessions being deemed religious indoctrination).

[14] The "actual notice" requirement first appeared in the SAMHSA reauthorization. *See* 42 U.S.C. § 300x–65(e)(2). The parallel subsection in H.R. 7 is § 1994A(f)(2). Of course, nothing in

Continued

The Department of Justice recommends that § 1994A of H.R. 7 be strengthened by amending subsection (i) along the lines indicated in the note below.[15] This proposal has a clearer statement of the voluntariness requirement. The provision on separating the government-funded program from sectarian practices is discussed in Part III, below. The suggested Certificate of Compliance has the purpose of impressing upon both the government/grantor and the FBO the importance of both voluntariness and the need to separate sectarian practices.

II. The Autonomy of Faith-Based Providers

Care must be taken that government funding not cause the religious autonomy of FBOs to be undermined. Likewise, care must be taken that the availability of government funding not cause FBOs to fall under the sway of government or silence their prophetic voice. Accordingly, charitable choice was drafted to vigorously safeguard the "religious character" of FBOs, explicitly reserving to these organizations "control over the definition, development, practice, and expression" of religious belief.[16] Additionally, congressional protection for the institutional autonomy of FBOs was secured so as to leave them free to succeed at what they do well, namely reaching under-served communities. Finally, protecting institutional autonomy was thought necessary to draw reluctant FBOs into participating in government programs, something many FBOs are unlikely to do if they face invasive or compromising controls.

One of the most important guarantees of institutional autonomy is an FBO's ability to select its own staff in a manner that takes into account its faith. Many FBOs believe that they cannot maintain their religious vision over a sustained time period without the ability to replenish their staff with individuals who share the tenets and doctrines of the association. The guarantee is central to each organization's freedom to define its own mission according to the dictates of its faith. It was for this reason that Congress wrote an exemption from religious discrimination by religious employers into Title VII of the Civil Rights Act of 1964. And charitable choice specifically provides that FBOs retain this limited exemption from federal employment nondiscrimination laws.[17] While it is essential that FBOs be permitted to make employ-

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prior versions of charitable choice prevents the government/grantor from ensuring actual notice of rights to beneficiaries. Moreover, while it may be prudent for the grantor to provide notice of rights whether required by the underlying legislation or not, the absence of a requirement in older versions of the law hardly rises to the level of a constitutional concern.

[15] (i) Limitations on Use of Funds; Voluntariness.—No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart. A certificate shall be separately signed by religious organizations, and filed with the government agency that disbursed the funds, certifying that the organization is aware of and will comply with this subsection. Failure to comply with the terms of the certification may, in addition to other sanctions as provided by law, result in the withholding of the funds and the suspension or termination of the agreement.

[16] Religious organizations often serve a useful role as moral critics of culture and, in particular, the actions of government. The mention of "control over . . . expression" in 42 U.S.C. § 604a(d)(1), prohibits government from using the threat of denial of a grant, or withholding monies due under an existing grant, as a means of "chilling" the prophetic voice of the FBO.

[17] 42 U.S.C. § 604a(f). The parallel subsection in H.R. 7 is § 1994A(e)(2). In order that these employment protections be more clear to all concerned, while still achieving the intended purpose, the Department of Justice recommends that the "Employment Practices" subsection to § 1994A be amended as set out below:

> (e) Employment Practices.—
>
> (1) In general.—In order to aid in the preservation of its religious character and autonomy, a religious organization that provides assistance under a program described in subsection (c)(4) may, notwithstanding any other federal law pertaining to religious discrimination in employment, take into account the religion of the members of the organization when hiring, promoting, transferring, or discharging an employee.
>
> (2) Title VII.—The exemption of a religious organization under section 702(a), and the exemption of an educational institution under section 703(e)(2) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e–1(a), 2000e–2(e)(2)), shall not be affected by the organization's or institution's provision of assistance, or receipt of funds, pursuant to a program described in subsection (c)(4). Nothing in this section alters the duty of a religious organization to otherwise comply with the nondiscrimination provisions in title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.).

This proposed amendment would ensure that FBOs may continue to staff on a religious basis. However, in this proposal religious considerations may not affect the terms of the compensation package. Hence, there is no intended "religious override" of minimum wage laws, or matters like social security or unemployment compensation. Additionally, under this proposal any employ-

ment decisions based on religious considerations, FBOs must, along with secular providers, follow federal civil rights laws prohibiting discrimination on the bases of race, color, national origin, gender, age, and disability.[18]

Opponents of charitable choice have charged that it permits a form of "government-funded job discrimination." We do not believe this is the case for the following reasons. *First*, there is a certain illogic to the claim that charitable choice is "funding job discrimination." The purpose of charitable choice, and the underlying federal programs, is not the creation or funding of jobs. Rather, the purpose is to fund social services. The FBO's employment decisions are wholly private. Because the government is not involved with an FBO's internal staffing decisions, there is no causal link between the government's singular and very public act of funding and an FBO's numerous and very private acts related to its staffing. Importantly, these internal employment decisions are manifestly not "state or governmental action" for purposes of the Fifth and Fourteenth Amendments.[19] Hence, because the Constitution restrains only "governmental action," these private acts of religious staffing cannot be said to run afoul of constitutional norms.[20]

Second, critics of charitable choice are wrong when they claim to have detected a contradiction. Why, they ask, is it important to staff on a religious basis when the FBOs cannot engage in religious indoctrination within a government-funded program? Since there can be no such indoctrination, they go on, what possible difference could it make that employees share the FBO's faith? There is no contradiction, however, once this line of argumentation is seen as failing to account for the FBO's perspective. From the government's perspective, to feed the hungry or house the destitute is secular work. But from the perspective of the FBO, to operate a soup kitchen or open a shelter for the homeless are acts of mercy and thus spiritual service. In his concurring opinion in *Corporation of the Presiding Bishop v. Amos*, Justice William Brennan, remembered as one of the Court's foremost civil libertarians, saw this immediately when he wrote that what government characterizes as social services, religious organizations view as the fulfillment of religious duty, as service in grateful response to unmerited favor, as good works that give definition and focus to the community of faithful, or as a visible witness and example to the larger society.[21] All of which is to observe that even when not engaged in "religious indoctrination" such as proselytizing or worship, FBOs view what they are doing as religiously motivated and thus may desire that such acts of mercy and love be performed by those of like-minded creed.[22]

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ment nondiscrimination provisions imbedded in the underlying federal program legislation cannot affect an FBO's right to staff on a religious basis. Finally, the §§ 702(a), 703(e)(2) exceptions in Title VII, while not broadened in any respect, are expressly preserved.

[18] In addition to Title VII of the Civil Rights Act of 1964, *see, e.g.,* Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (1994) (prohibiting discrimination on the bases of race, color, and national origin); Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ 1681–1688 (1994) prohibiting discrimination in educational programs and activities on the bases of sex and visual impairment); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1994) prohibiting discrimination against otherwise qualified disabled individuals, including individuals with a contagious disease or an infection such as HIV); The Age Discrimination Act of 1975, 29 U.S.C. § 706(8)(c) (1994) (prohibiting discrimination on the basis of age).

[19] *See* Blum v. Yaretsky, 457 U.S. 991 (1982) (holding that pervasive regulation and the receipt of government funding at a private nursing home does not, without more, constitute state action); Rendell-Baker v. Kohn, 457 U.S. 830 (1982) (holding that a private school heavily funded by the state is not thereby state actor); Flagg Brothers, Inc. v. Brooks, 436 U.S. 149, 164 (1978) (holding that the enactment of a law whereby the state acquiesces in the private acts of a commercial warehouse does not thereby convert the acts of the warehouse into those of the state).

[20] That an act of religious staffing is not attributable to the government and thus not subject to Establishment Clause norms restraining actions by government has already been ruled on by the Supreme Court. *See* Corporation of the Presiding Bishop v. Amos, 483 U.S. 327, 337 (1987) ("A law is not unconstitutional simply because it *allows* churches to advance religion, which is their very purpose. . . . [I]t must be fair to say that the *government itself* has advanced religion through its own activities and influence."); *id.* at 337 n.15 ("Undoubtedly, [the employee's] freedom of choice in religious matters was impinged upon, but it was the Church . . . and not the Government, who put him to the choice of changing his religious practices or losing his job.").

[21] 483 U.S. at 342–44 (Brennan, J., concurring).

[22] We acknowledge that many FBOs do not staff on a religious basis, nor do they desire to do so. But many others do, and desire to continue doing so. Further, many FBOs that staff on a religious basis do so with respect to some jobs but not others. Finally, many FBOs do not staff on the basis of religion in any affirmative sense, but they do require that employees not be in open defiance of the organization's creed. The employment practices of FBOs, as well as their religious motives, are varied and complex, yet another reason for government to eschew attempts to regulate the subject matter.

Third, it is not always appreciated that private acts of religious staffing are not motivated by prejudice or malice. In no way is religious staffing by FBOs comparable to the invidious stereotyping, even outright malice, widely associated with racial and ethnic discrimination. Rather, the FBO is acting—and understandably so—in accord with the dictates of its sincerely held religious convictions. Justice William Brennan, once again, was quick to recognize the importance of such civil rights exemptions to the autonomy of faith-based organizations:

> Determining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them, is thus a means by which a religious community defines itself. Solicitude for a church's ability to do so reflects the idea that furtherance of the autonomy of religious organizations often furthers individual religious freedom as well.[23]

Which is to say, not all discrimination is malevolent.[24] A religious organization favoring the employment of those of like-minded faith is comparable to an environmental organization staffing only with employees devoted to preserving the environment, a feminist organization hiring only those devoted to the cause of expanded opportunities for women, or a teacher's union hiring only those opposed to school vouchers. To bar a religious organization from hiring on a religious basis is to assail the very animating cause for which the organization was formed in the first place. If these FBOs cannot operate in accord with their own sense of self-understanding and mission, then many will decline to compete for charitable choice funding. If that happens, the loss will be borne most acutely by the poor and needy.

Fourth, in a very real sense Congress already made a decision to protect religious staffing by FBOs back in 1964, and then to expand on its scope in 1972.[25] Section 702(a) of Title VII of the Civil Rights Act of 1964[26] exempts religious organizations from Title VII liability for employment decisions based on religion.[27] Opponents claim that the § 702(a) exemption is waived when an FBO becomes a federally funded provider of social services. The law is to the contrary. Waiver of rights is disfavored in the law, and, as would be expected, the case law holds that the § 702(a) exemption is not forfeited when an FBO becomes a provider of publicly funded services.[28] Indeed, charitable choice expressly states that the § 702(a) exemption is preserved.[29] In light of the fact that the statutory language makes clear to FBOs that they will not be "impair[ed]" in their "religious character" if they partici-

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[23] 483 U.S. at 342–43 (Brennan, J., concurring).

[24] *Cf.* op-ed column by Nathan J. Diament, *A Slander Against Our Sacred Institutions*, Washington Post p. A23 (May 28, 2001) ("Their assumption is that faith-based hiring by institutions of faith is equal in nature to every other despicable act of discrimination in all other contexts. This is simply not true.").

[25] The nature and history of this expansion in the Equal Employment Opportunity Act of 1972 is set forth in *Amos,* 483 U.S. at 332–33. A co-sponsor of the 1972 expansion, Senator Sam Ervin, explained its purpose in terms of reinforcing the separation of church and state. The aim said Senator Ervin, was to "take the political hands of Caesar off the institutions of God, where they have no place to be." 118 Cong. Rec. 4503 (1972).

[26] 42 U.S.C. § 2000e-1(a) (1994). Religious educational institutions are separately exempt under 42 U.S.C. § 2000e-2(e)(2) (1994).

[27] The Title VII religious exemption was upheld in Corporation of the Presiding Bishop v. Amos, 483 U.S. 327 (1987). *Amos* held that the exemption was not a religious preference violative of the Establishment Clause. Moreover, the Establishment Clause permits Congress to enact exemptions from regulatory burdens not compelled by the Free Exercise Clause, as well as regulatory exemptions that accommodate only religious practices and organizations. *Id*. at 334, 338.

[28] *See* Hall v. Baptist Memorial Health Care Corp., 215 F.3d 618, 625 6th Cir. 2000) (dismissing religious discrimination claim filed by employee against religious organization because organization was exempt from Title VII and the receipt of substantial government funding did not bring about a waiver of the exemption); Siegel v. Truett-McConnell College, 13 F. Supp.2d 1335, 1343–45 (N.D. Ga. 1994), *aff'd,* 73 F.3d 1108 (11th Cir. 1995) (table) (dismissing religious discrimination claim filed by faculty member against religious college because was exempt from Title VII and the receipt of substantial government funding did not bring about a waiver of the exemption or violate the Establishment Clause); Young v. Shawnee Mission Medical Center, 1988 U.S. Dist. LEXIS 12248 (D. Kan. Oct. 21, 1988) (holding that religious hospital did not lose Title VII exemption merely because it received federal Medicare payments); *see* Little v. Wuerl, 929 F.2d 944, 951 (3d Cir. 1991) (exemption to Title VII for religious staffing by a religious organization is not waivable); Arriaga v. Loma Linda University, 10 Cal.App.4th 1556, 13 Cal. Rptr.2d 619 (1992) (religious exemption in state employment nondiscrimination law was not lost merely because religious college received state funding); Saucier v. Employment Security Dept., 954 P.2d 285 (Wash. Ct. App. 1998) (Salvation Army's religious exemption from state unemployment compensation tax does not violate Establishment Clause merely because the job of a former employee in question, a drug abuse counselor, was funded by federal and state grants).

[29] 42 U.S.C. § 604a(f). The parallel subdivision in H.R. 7 is § 1994A(e)(2).

pate in charitable choice, it is wholly contradictory to then suggest that FBOs have impliedly waived this valuable autonomy right.

Charitable choice affirmatively enables and requires government to stop "picking and choosing" between groups on the basis of religion. No longer can there be wholesale elimination of able and willing providers found by regulators or civil magistrates to be "too religious," a constitutionally intrusive and analytically problematic determination.[30] With charitable choice, religion is irrelevant during the grant awarding process. Nor does the government, in making awards, need to sort out those groups thought "genuinely" religious from those deemed *pseudo*-religious. This means that, contrary to the critics' fears, charitable choice leads to less, rather than more, regulation of religion.

Additionally, welfare beneficiaries have greater choice when selecting their service provider. For those beneficiaries who, out of spiritual interests or otherwise, believe they will be better served by an FBO, such choices will now be available in greater number. Expanding the variety of choices available to needy individuals in turn reduces the government's influence over how those individual choices are made.

III. The Neutrality Principle

When discussing Establishment Clause restraints on a government's program of aid, a rule of equal-treatment or nondiscrimination among providers, be they secular or religious, is termed "neutrality" or the "neutrality principle." Charitable choice is consistent with neutrality, but courts need not wholly embrace the neutrality principle to sustain the constitutionality of charitable choice.

The U.S. Supreme Court distinguishes, as a threshold matter, between direct and indirect aid.[31] For any given program, charitable choice allows, at the government's option, for direct or indirect forms of funding, or both. Indirect aid is where the ultimate beneficiary is given a coupon, or other means of free agency, such that he or she has the power to select from among qualified providers at which the coupon may be "redeemed" and the services rendered. In a series of cases, and in more recent commentary contrasting indirect aid with direct-aid cases, the Supreme Court has consistently upheld the constitutionality of mechanisms providing for indirect means of aid distributed without regard to religion.[32] The Child Care and Development Block Grant Program of 1990,[33] for example, has been providing low income parents indirect aid for child care via "certificates" redeemable at, *inter alia*, churches and other FBOs. The act has never been so much as even challenged in the courts as unconstitutional.

In the context of direct aid, the Supreme Court decision that has most recently addressed the neutrality principle is *Mitchell v. Helms*.[34] The four-Justice plurality, written by Justice Thomas, and joined by the Chief Justice, and Justices Scalia and Kennedy, embraced, without reservation, the neutrality principle. In the sense of

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[30] In regard to the constitutional and practical difficulties with sorting out, and then barring from program participation, those FBOs thought to fit that slippery category of "pervasively sectarian," the plurality in Mitchell v. Helms, 120 S. Ct. 2530 (2000), said as follows:

[T]he inquiry into the recipient's religious views required by a focus on whether a school is pervasively sectarian is not onlyunnecessary but also offensive. It is well established, in numerous other contexts, that courts should refrain from trolling through a person's or institution's religious beliefs. . . . Although the dissent welcomes such probing . . . we find it profoundly troubling.—Id. at 2551 (citations omitted).

The problem is more thoroughly addressed at Vol. 42 Wm & Mary L. Rev. 883, 907–14 (2001) (collecting cases suggesting that to require distinguishing between pervasively and non-pervasively sectarian organizations is inconsistent with the Court's case law elsewhere holding that civil authorities should refrain from probing the inner workings of religious organizations.

[31] *See* Mitchell v. Helms, 120 S. Ct. 2530, 2558–59 (2000) (O'Connor, J., concurring in the judgment).

[32] *See* Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1 (1993) (providing special education services to Catholic high school student not prohibited by Establishment Clause); Witters v. Washington Dept. of Servs. For the Blind, 474 U.S. 481 (1986) (upholding a state vocational rehabilitation grant to disabled student that elected to use the grant to obtain training as a youth pastor); Mueller v. Allen, 463 U.S. 388 (1983) (upholding a state income tax deduction for parents paying school tuition at religious schools); *see also* Rosenberger v. Rector and Visitors, 515 U.S. 819, 878–79 (1995) (Souter, J., dissenting) (distinguishing cases upholding indirect funding to individuals, admitted to be the law of the Court, from direct funding to religious organizations).

[33] 42 U.S.C. §§ 9858—9858q (1994).

[34] 120 S. Ct. 2530 (2000) (plurality opinion).

positive law, however, Justice O'Connor's opinion concurring in the judgment is controlling in the lower courts and on legislative bodies.[35]

Before proceeding in greater detail, the controlling principle coming from Mitchell v. Helms can be briefly stated: A government program of aid that directly assists the delivery of social services at a faith-based provider, one selected by the government without regard to religion, is constitutional, but real and meaningful controls must be built into the program so that the aid is not diverted and spent on religious indoctrination.[36]

Based on Justice O'Connor's opinion, when combined with the four Justices comprising the plurality, it can be said that: (1) neutral, indirect aid to a religious organization does not violate the Establishment Clause;[37] and (2) neutral, direct aid to a religious organization does not, without more, violate the Establishment Clause.[38] Having indicated that program neutrality is an important but not sufficient factor in determining the constitutionality of direct aid, Justice O'Connor went on to say that: (a) *Meek v. Pittenger*[39] and *Wolman v. Walter*[40] should be overruled; (b) the Court should do away with all presumptions of unconstitutionality; (c) proof of actual diversion of government aid to religious indoctrination would be violative of the Establishment Clause; and (d) while adequate safeguards to prevent diversion are called for, an intrusive and pervasive governmental monitoring of FBOs is not required.

The federal program in *Mitchell* entailed aid to K–12 schools, public and private, secular and religious, allocated on a per-student basis. The same principles apply, presumably, to social service and health care programs, albeit, historically the Court has scrutinized far more closely direct aid to K–12 schools compared to social welfare and health care programs.[41]

In cases involving programs of direct aid to K–12 schools, Justice O'Connor started by announcing that she will follow the analysis first used in *Agostini v. Felton*.[42] She began with the two-prong *Lemon* test as modified in *Agostini*: is there a secular purpose and is the primary effect to advance religion? Plaintiffs did not contend that the program failed to have a secular purpose, thus she moved on to the second part of the *Lemon/Agostini* test.[43] Drawing on *Agostini*, Justice O'Connor noted that the primary-effect prong is guided by three criteria. The first two inquiries are whether the government aid is actually diverted to the indoctrination of religion and whether the program of aid is neutral with respect to religion. The third criterion is whether

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[35] *Id*. at 2556 (O'Connor, J., concurring in the judgment). Her opinion was joined by Justice Breyer. *See* Marks v. United States, 430 U.S. 188, 193 (1977) (when Supreme Court fails to issue a majority opinion, the opinion of the members who concurred in the judgment on narrowest grounds is controlling).

[36] *Mitchell* does not speak—except in the most general way—to the scope of the Establishment Clause when it comes to other issues such as religious exemptions in regulatory or tax laws, religious symbols on public property, or religious expression by government officials. In that regard, *Mitchell* continues the splintering of legal doctrine leading to different Establishment Clause tests for different contexts.

[37] *Id*. at 2558–59

[38] *Id*. at 2557. Justice O'Connor explained that by "neutral" program of aid she meant "whether the aid program defines its recipients by reference to religion." *Id*. at 2560. To be "neutral" in this sense, a grant program must be facially nondiscriminatory with respect to religion, and, where there is discretion in awarding a grant, nondiscriminatory as applied.

[39] *Id*. at 2556, 2563–66. Meek v. Pittenger, 421 U.S. 349 (1975) (plurality in part), had struck down loans to religious schools of maps, photos, films, projectors, recorders, and lab equipment, as well as disallowed services for counseling, remedial and accelerated teaching, and psychological, speech, and hearing therapy.

[40] 120 S. Ct. at 2556, 2563–66. Wolman v. Walter, 433 U.S. 229 (1977) (plurality in part), had struck down use of public school personnel to provide guidance, remedial and therapeutic speech and hearing services away from the religious school campus, disallowed the loan of instructional materials to religious schools, and disallowed transportation for field trips by religious school students.

[41] *See* Bowen v. Kendrick, 487 U.S. 589 (1989) (upholding, on its face, religiously neutral funding of teenage sexuality counseling centers); Bradfield v. Roberts, 175 U.S. 291 (1899) (upholding use of federal funds for construction at a religious hospital). In sharp contrast, the Court has been "particularly vigilant" in monitoring compliance with the Establishment Clause in K–12 schools, where the government exerts "great authority and coercive power" over students through a mandatory attendance requirement. Edwards v. Aguillard, 482 U.S. 578, 583–84 (1987).

[42] *Mitchell*, 120 S. Ct. at 2556, 2560. Agostini v. Felton, 521 U.S. 203 (1997), upheld a program whereby public school teachers go into K–12 schools, including religious schools, to deliver remedial educational services.

[43] *Mitchell*, 120 S. Ct. at 2560. Plaintiffs were well counseled not to argue that the program lacked a secular purpose. The secular-purpose prong of the test is easily satisfied. *See, e.g.,* Bowen v. Kendrick, 487 U.S. 589, 602 (1988) ("a court may invalidate a statute only if it is motivated wholly by an impermissible purpose").

the program creates excessive administrative entanglement,[44] now clearly downgraded to just one more factor to weigh under the primary-effect prong.[45]

After outlining for the reader the Court's *Lemon/Agostini* approach, Justice O'Connor then inquired into whether the aid was actually diverted, in a manner attributable to the government, and whether program eligibility was religion neutral. Because the federal K–12 educational program under review in *Mitchell* was facially neutral, and administered evenhandedly, as to religion,[46] she spent most of her analysis on the remaining factor, namely, diversion of grant assistance to religious indoctrination. Justice O'Connor noted that the educational aid in question was, by the terms of the statute, required to supplement rather than to supplant monies received from other sources,[47] that the nature of the aid was such that it could not reach the "coffers" of places for religious inculcation, and that the use of the aid was statutorily restricted to "secular, neutral, and nonideological" purposes.[48] Concerning the form of the assistance, she noted that the aid consisted of educational materials and equipment rather than cash, and that the materials were on loan to the religious schools.[49]

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[44] In *Mitchell*, plaintiffs did not contend that the program created excessive administrative entanglement. 120 S. Ct. at 2560. Prior to *Agostini*, entanglement analysis was a separate, third prong to the *Lemon* test.

The Supreme Court has long since stopped using "political divisiveness" inquiry as a separate aspect of entanglement analysis. *See, e.g.,* Bowen v. Kendrick, 487 U.S. 589, 617 n.14 (1988) (rejecting political divisiveness alone as a basis for invalidating governmental aid program). Hence, neither the plurality nor Justice O'Connor gave even passing mention to "political divisiveness." We follow their lead.

[45] Alternatively, the same evidence shifted under the effect prong of *Lemon/Agostini* can be examined pursuant to Justice O'Connor's no-endorsement test. *Mitchell*, 120 S. Ct. at 2560. The no-endorsement test asks whether an "objective observer" would feel civic alienation upon examining the program of aid and learning that some of the grants are awarded to FBOs. A finding of government endorsement of religion is unlikely unless a facially neutral program, when applied, singles out religion for favoritism. In *Mitchell*, Justice O'Connor did not utilize the alternative no-endorsement test when doing the *Lemon/Agostini* analysis. We follow her lead. She did, however, use the no-endorsement test for another purpose. *See id*. at 2559 (explaining why she thought the plurality was wrong to abandon the direct-aid/indirect-aid distinction).

[46] Religious neutrality, explained Justice O'Connor, ensures that an aid program does not provide a financial incentive for the individuals intended to ultimately benefit from the aid "to undertake religious indoctrination." *Mitchell*, 120 S. Ct. at 2561 (quoting *Agostini*).

[47] One of the aims of charitable choice is that faith-based and other community organizations be able to expand their capacity to provided for the social service needs of under-served neighborhoods. In that sense, then, charitable choice is supplemental. For many neutral programs of aid, application of the supplement/not-supplant factor would, if allowed to be controlling, conflict with long-settled precedent. For example, the Court has long since allowed state-provided textbooks and bussing for religious schools. *See* Cochran v. Louisiana State Bd. of Educ., 281 U.S. 370 (1930) (textbooks); Everson v. Board of Educ., 330 U.S. 1 (1947) (bussing). Once the government provided textbooks and bussing, monies in a school's budget could be shifted to other uses, including sectarian uses. Yet such aid is in apparent conflict with the admonition to supplement/not-supplant. *See also Committee for Public Education v. Regan,* 444 U.S. 646, 661–62 (1980), where the Court upheld aid that "supplanted" expenses otherwise borne by religious schools for state-required testing. Even the dissent in *Mitchell* concedes that reconciliation between *Regan* and an absolute prohibition on aid that supplants rather than supplements "is not easily explained." 120 S. Ct. at 2588 n.17 (Souter, J., dissenting). *Regan* suggests that no "blanket rule" exists. *Id*. at 2544 n.7 (plurality).

The Supreme Court's past practice is to trace the government funds to the point of expenditure, rejecting any requirement whereby government funds must not be provided where the public funds thereby "free up" private money which then might be diverted to religious indoctrination. *See Regan*, 444 U.S. at 658 ("The Court has not accepted the recurrent argument that all aid is forbidden because aid to one aspect of an institution frees it to spend its other resources on religious ends."); New York v. Cathedral Academy, 434 U.S. 125, 134 (1977) ("this Court has never held that freeing private funds for sectarian uses invalidates otherwise secular aide to religious institutions").

[48] 120 S. Ct. at 2557, 2562

[49] *Id*. at 2562. On at least one occasion the Supreme Court upheld direct cash payments to religious K–12 schools. *See* Committee for Public Education v. Regan, 444 U.S. 646 (1980). The payments were in reimbursement for state-required testing. Rejecting a rule that cash was never permitted, the *Regan* Court explained:

We decline to embrace a formalistic dichotomy that bears so little relationship either to common sense or the realities of school finance. None of our cases requires us to invalidate these reimbursements simply because they involve [direct] payments in cash.—*Id.* at 658. *See also Mitchell*, 120 S. Ct. at 2546 n.8 (plurality noting that monetary assistance is not "*per se* bad," just a factor calling for more care).

Justice O'Connor explained that monetary aid is of concern because it "falls precariously close to the original object of the Establishment Clause prohibition." *Mitchell*, 120 S. Ct. at 2566. Part of that history, explicated in Everson v. Board of Educ., 330 U.S. 1 (1947), was the defeat spear-

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Justice O'Connor proceeded to reject a rule of unconstitutionality where the character of the aid is merely capable of diversion to religious indoctrination, hence overruling *Meek* and *Wolman*.[50] As the Court did in *Agostini*, Justice O'Connor rejected employing presumptions of unconstitutionality and indicated that henceforth she will require proof that the government aid was actually diverted to indoctrination.[51] Because the "pervasively sectarian" test is such a presumption, indeed, an irrebutable presumption (i.e., any direct aid to a highly religious organization is deemed to advance sectarian objectives),[52] Justice O'Connor is best understood to have rendered the "pervasively sectarian" test no longer relevant when assessing neutral programs of aid.[53]

Justice O'Connor requires that no government funds be diverted to "religious indoctrination," thus religious organizations receiving direct funding will have to separate their social service program from their sectarian practices.[54] If the federal assistance is utilized for educational functions without attendant sectarian activities, then there is no problem. If the aid flows into the entirety of an educational program and some "religious indoctrination [is] taking place therein," then the indoctrination "would be directly attributable to the government."[55] Hence, if any part of an FBO's activities involve "religious indoctrination," such activities must be set apart from the government-funded program and, hence, are privately funded.

A welfare-to-work program operated by a church in Philadelphia illustrates how this can be done successfully. Teachers in the program conduct readiness-to-work classes in the church basement weekdays pursuant to a government grant. During a free-time period the pastor of the church holds a voluntary Bible study in her office up on the ground floor. The sectarian instruction is privately funded and separated in both time and location from the welfare to work classes.

In the final part of her opinion, Justice O'Connor explained why safeguards in the federal educational program at issue in *Mitchell* reassured her that the program, as applied, was not violative of the Establishment Clause. A neutral program of aid need not be failsafe, nor does every program require pervasive monitoring.[56] The statute limited aid to "secular, neutral, and nonideological" assistance and expressly prohibited use of the aid for "religious worship or instruction."[57] State educational authorities required religious schools to sign Assurances of Compliance with the

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headed in Virginia by James Madison of a proposed tax. As more precisely explained by Justice Thomas, the legislation defeated in Virginia was a tax ear-marked for the support of clergy. Rosenberger v. Rector and Visitors, 515 U.S. 819, 852 (1995) (Thomas, J., concurring). Opposition to a tax ear-marked for explicitly religious purposes indeed does go to the heart of the adoption of the Establishment Clause. Charitable choice monies, however, come from general tax revenues, are awarded in a manner that is neutral as to religion, and do not fund sectarian practices.

[50] 120 S. Ct. at 2557, 2562.

[51] Justice O'Connor's statement sidelining future reliance on presumptions that employees of highly religious organizations cannot or will not follow legal restraints on the expenditure of government funds is as follows:

I believe that our definitive rejection of [the] presumption [in *Agostini*] also stood for—or at least strongly pointed to—the broader proposition that such presumptions of religious indoctrination are normally inappropriate when evaluating neutral school-aid programs under the Establishment Clause.—Id. at 2567.

[52] *See id.* at 2561 (noting that *Agostini* rejected a presumption drawn from *Meek* and later *Aguilar*); *id.* at 2563–64 (quoting from *Meek* the "pervasively sectarian" rationale and noting it created an irrebutable presumption which Justice O'Connor later rejects); *id.* at 2567 (requiring proof of actual diversion, thus rendering "pervasively sectarian" test irrelevant); *id.* at 2568 (rejecting presumption that teachers employed by religious schools cannot follow statutory requirement that aid be used only for secular purposes); and *id.* at 2570 (rejecting presumption of bad faith on the part of religious school officials).

[53] While Justice O'Connor did not join in the plurality's denunciation of the "pervasively sectarian" doctrine as bigoted, her opinion made plain that the doctrine has lost relevance. Thus, while not taking issue with the plurality's condemnation of the doctrine as anti-Catholic, she in fact explicitly joined in overruling the specific portions of *Meek* that set forth the operative core of the "pervasively sectarian" concept. 120 S. Ct. at 2563.

[54] *Id.* at 2568.

[55] *Id.* A lower court recently applied this principle by striking down direct monetary payments, unrestricted as to use, to reimburse schools, including religious schools, to reimburse them for the cost of Internet access. *See* Freedom From Religion Foundation v. Bugher, 2001 WL 476595 (7th Cir. Apr. 27, 2001). Once received, the money went into general revenues and could later be used for sectarian purposes. On the other hand, the lower trial court decision in the same case upheld a parallel program whereby the state provided a below-cost Internet link to schools, including religious schools. Hence, the aid could not be diverted to sectarian use. 55 F. Supp.2d 962 (W.D. Wis. 1999). While on appeal, the plaintiffs' challenge to this parallel program was dropped when, in the interim, *Mitchell v. Helms* was handed down.

[56] 120 S. Ct. at 2569.

[57] *Id.*

above-quoted spending prohibitions being express terms in the grant agreement.[58] The state conducted monitoring visits, albeit infrequently, and did a random review of government-purchased library books for their sectarian content.[59] There was also monitoring of religious schools by local public school districts, including a review of project proposals submitted by the religious schools and annual program-review visits to each recipient school.[60] The monitoring did catch instances of actual diversion, albeit not a substantial number, and Justice O'Connor was encouraged that when problems were detected they were timely corrected.[61]

Justice O'Connor said that various diversion-prevention factors such as supplement/not-supplant, aid not reaching religious coffers, and the aid being in-kind rather than monetary are not talismanic. She made a point not to elevate them to the level of constitutional requirements.[62] Rather, effectiveness of these diversion-prevention factors, and other devices doing this preventative task, are to be sifted and weighed given the overall context of, and experience with, the government's program.[63]

Charitable choice is responsive to the *Lemon/Agostini* test and Justice O'Connor's opinion in *Mitchell v. Helms*:

1. The legislation gives rise to neutral programs of aid and expressly prohibits diversion of the aid to "sectarian worship, instruction, or proselytization." Thus, sectarian aspects of an FBO's activities would have to be segmented off and, if continued, privately funded. An amendment recommended by the Department of Justice is set out in the note below.[64] Under this proposal, direct monetary funding is allowed where an FBO, by structure and operation, will not permit diversion of government funds to religious indoctrination.[65] Some FBOs, of course, will be unable or unwilling to separate their program in the required fashion. Charitable choice is not for such providers. Those FBOs who do not qualify for direct funding should be considered candidates for indirect means of aid.

2. Participation by beneficiaries is voluntary or noncompulsory. A beneficiary assigned to an FBO has a right to demand an alternative provider. Having elected to receive services at an FBO, a beneficiary has the additional right to "refuse to participate in a religious practice." *See* discussion in Part I, above.

3. Government-source funds are kept in accounts separate from an FBO's private-source funds, and the government may audit, at any time, those accounts that receive government funds.[66] Thus, charitable choice does take special care, because the aid is in the form of monetary grants, in two ways: separate accounts for government funds are established, hence, preventing the diversion of "cash to church coffers;"[67] and direct monetary grants are restricted to program services, hence, must not be diverted to sectarian practices.[68]

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[58] *Id.*

[59] *Id.*

[60] *Id.* at 2569–70.

[61] *Id.* at 2571–72.

[62] *Id.* at 2572 ("[r]egardless of whether these factors are constitutional requirements . . .").

[63] Monetary payments are just a factor to consider, not controlling. This makes sense given Justice O'Connor's concurring opinion in *Bowen v. Kendrick*, wherein she joined in approving cash grants to religious organizations, even in the particularly "sensitive" area of teenage sexual behavior, as long as there is no actual "use of public funds to promote religious doctrines." Bowen v. Kendrick, 487 U.S. 589, 623 (1988) (O'Connor, J., concurring). *See also supra* note 49.

[64] The Department of Justice recommends that H.R. 7 be clarified by the following amendment:

(i) **Limitations on Use of Funds; Voluntariness.**—No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart. A certificate shall be separately signed by religious organizations, and filed with the government agency that disbursed the funds, certifying that the organization is aware of and will comply with this subsection. Failure to comply with the terms of the certification may, in addition to other sanctions as provided by law, result in the withholding of the funds and the suspension or termination of the agreement.

[65] Justice O'Connor nowhere defined what she meant by "religious indoctrination." However, elsewhere the Supreme Court has found that prayer, devotional Bible reading, veneration of the Ten Commandments, classes in confessional religion, and the biblical creation story taught as science are all inherently religious. 42 Wm & Mary, *supra* note 30, at 915 (collecting cases).

[66] In the Substance Abuse and Mental Health Services Administration reauthorization the segregation of accounts is required. 42 U.S.C. § 300x–65(g)(2). This improves accountability, especially in helping to avoid diversion to "religious coffers," with little loss of organizational autonomy. The parallel subsection in H.R. 7 is § 1994A(h)(1).

[67] *See* 42 U.S.C. 300x–65(g)(1).

[68] *See* 42 U.S.C. 300x–65(i).

4. For larger grantees, the government requires regular audits by a certified public accountant. The results are to be submitted to the government, along with a plan of correction if any variances that are uncovered.[69]

Nothing in charitable choice prevents officials from implementing reasonable and prudent procurement regulations, such as requiring providers to sign a Certification of Compliance promising attention to essential statutory duties.[70] Additionally, it is not uncommon for program policies to require of providers periodic compliance self-audits. Any discrepancies uncovered in a self-audit must be promptly reported to the government along with a plan to timely correct any deficiencies.[71] The Department of Justice believes it prudent to add these additional provisions to § 1994A of H.R. 7.

CONCLUSION

Charitable choice facially satisfies the constitutional parameters of the Lemon/Agostini test, including Justice O'Connor's application of that test in Mitchell v. Helms. Adoption of the Department of Justice's recommendations in notes 15, 17, 64, and 71, above, will further clarify and strengthen § 1994A's provisions, as well as ease its scrutiny in the courts. Moreover, for many cooperating FBOs, those willing to properly structure their programs and be diligent with their operating practices, it appears that charitable choice can be applied in accord with the applicable statutory and constitutional parameters.

June 15, 2001

The Honorable William M. Thomas
Chairman
Committee on Ways and Means
1102 Longworth Building

Dear Chairman Thomas:

When the Committee on Ways and Means takes up charitable giving tax incentives, including the incentives considered at the June 14, 2001, combined Select Revenue Measures Subcommittee and Human Resources Subcommittee hearing, we would urge you to include a proposal to remove the special limitations that apply under current law with respect to charitable contributions of appreciated property.

We believe that the current-law limits on gifts of appreciated property are set far too low. While individuals making charitable contributions may generally deduct amounts up to 50 percent of their incomes (30 percent for gifts to private foundations), deductions for gifts of capital gains property are limited to 30 percent of income (20 percent for gifts to private foundations).

As Congressman Philip Crane noted at the June 14 hearing, the lower contribution limits for gifts of appreciated property add complexity and discourage charitable gifts by those who are among the most generous. Potential donors discouraged by the current limits include people who are in a position to make the large gifts that serve as the bedrock of support for many charitable organizations. The limits also discourage gifts by seniors who are no longer in their peak earning years but who wish to make charitable gifts out of savings.

We support allowing contributions of appreciated property to be deductible within the same percentage limits that apply to other charitable gifts. This proposal would be complementary to other important charitable giving proposals that have been submitted to the Congress by President Bush. We note that this same proposal was included in the budget that the Clinton Administration submitted to Congress last

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[69] All federal programs involving financial assistance to nonprofit institutions require annual audits by a certified public accountant whenever the institution receives more than $300,000 a year in total federal awards. Executive Office of the President of the United States, Office of Management and Budget, Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, 62 Fed. Reg. 35289 to 35302 (June 30, 1997). The independent audit is not just over financial expenditures, but includes a review for program compliance.

[70] *See* notes 15 and 64, *supra*, for an example of a "Certification of Compliance" requirement drafted into the charitable choice provision.

[71] A self-audit subpart for insertion into H.R. 7 at § 1994A(h)(3), would read as follows: "An organization providing services under a program described in this section shall conduct annually a self audit for compliance with its duties under this section and submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit."

year, and was estimated by the Joint Committee on Taxation to have a ten-year cost of $412 million.

We thank you for your longstanding support of the charitable community and for your willingness to consider this significant incentive for charitable giving.

American Arts Alliance
American Association of Museums
American Library Association
American Symphony Orchestra League
Americans for the Arts Association of Art Museum Directors
Association of Performing Arts Presenters
College Art Association
Council of Literary Magazines and Presses
Dance/USA
Literary Network
Museum Trustee Association
National Assembly of State Arts Agencies
OMB Watch
Opera America
Theatre Communications Group

Statement of Richard T. Foltin, Legislative Director and Counsel, Office of Government and International Affairs, American Jewish Committee

My name is Richard Foltin. I am Legislative Director and Counsel in the Office of Government and International Affairs of the American Jewish Committee, the nation's premier human relations organization with over 100,000 members and supporters and chapters in 32 cities across the United States. I submit this statement on behalf of the American Jewish Committee to the joint hearing of the House Ways and Means Subcommittee on Human Resources and Subcommittee on Select Revenue Measures in order to present AJC's perspective on certain of the issues presented by H.R.7, the "Community Solutions Act of 2001."

As members of the Subcommittees well know, on January 29, 2001, President George W. Bush issued two executive orders that began implementation of one of his major policy priorities, expansion of the involvement of "faith-based organizations" in the provision of government-funded social services. The first executive order created a new White House Office of Faith-Based and Community Initiatives, tasked with establishing policies, priorities, and objectives in promoting this policy. The second directive, coordinated with the provisions of the first, charged each of five designated Cabinet departments to set up an in-house office in order to identify "barriers" to the participation of faith-based organizations in the delivery of social services provided under the aegis of that department, barriers that could include the department's standing regulations and practices, and make recommendations for reforms to remove those barriers. This process of review and recommendation is expected to be completed in the coming weeks.

The President's unveiling of his faith-based initiative has given rise to a storm of controversy, with concerns expressed by advocates on both the right and left as to the implications of this approach for church-state separation, civil-rights policy, and the autonomy of religious institutions. This controversy has taken place, however, with much still unclear as to the specifics of how President Bush's vision of an expanded partnership of government and religious institutions will operate. But even if we do not know the details of the President's program, many of its likely elements are to be found in the "charitable choice" construct first enacted as part of the 1996 welfare reform law,[1] an approach subsequently passed by Congress and signed into law by President Clinton in several other social services bills[2] and included, in somewhat altered form, in H.R.7.

We share and commend the desire to deal constructively with society's ills that has led President Bush to develop his faith-based initiative and that, no less, has motivated Representatives Watts and Hall to introduce H.R.7. But the "charitable choice" approach to government funding of social services is, in our view, an uncon-

[1] Personal Responsibility and Work Opportunity Reconciliation Act. Public Law 104–193 (1996).

[2] Community Services Block Grant Act, Public Law 105–285 (1998); Children's Health Act of 2000, Public Law 106–310 (2000); and New Markets Venture Capital Program Act, Public Law 106–554 (2000).

stitutional breach of the principle of separation of church and state and just plain bad public policy.

The Problems with "Charitable Choice"

The history of social services in this country began with religious institutions, and the partnership between religiously affiliated institutions and government in the provision of those services is a venerable one. Catholic Charities, not to mention many Jewish agencies across this land, have been engaged in such public-private partnerships for many years. The norm has been for these 501(c)(3) organizations to provide government-funded, secular social services in a fashion that does not involve proselytization, does not require religious worship, and does not discriminate on the basis of religion with respect to the employees they hire to provide their services or the recipients of those services. And these religiously-affiliated organizations have been able to do so without divesting themselves of their religious identities, while continuing to make available privately-funded, separately offered religious activities. Thus, Catholic hospitals, which receive public funds, have crosses on their premises, and Jewish homes for the elderly, which also receive public funds, have *mezuzoth* on the doors and hold *Shabbat* services on Saturday mornings.

Far from objecting to this history of partnership, the American Jewish Committee, in its 1990 Report on Sectarian Social Services and Public Funding, termed the involvement of the religious sector in publicly-funded social service provision as "desirable to the extent it is consistent with the Establishment Clause. It creates options for those who wish to receive the services, involves agencies and individuals motivated to provide the services, and helps to avoid making the government the sole provider of social benefits."

Our concerns about "charitable choice," then, do not reflect any lack of high regard for the important work that religious institutions do in providing social services nor an effort to erect an impassible barrier to cooperation between these institutions and the government in the provision of those services. Rather, we are opposed to "charitable choice" because it eliminates long-standing and important church-state and anti-discrimination safeguards that have historically been in place when religiously affiliated organizations are engaged in provision of government-subvented services.

Contrary to long-standing practice and judicial precedent, *"charitable choice" permits houses of worship and other pervasively religious institutions to receive taxpayer dollars for provision of social services.* In 1988, in *Bowen v. Kendrick,* even as the United States Supreme Court upheld as constitutional the participation of religiously affiliated organizations that are not themselves pervasively sectarian in a federally funded program on the assumption that the program would be implemented "in a lawful, secular manner,"[3] the Court cited precedents holding that aid flowing to "pervasively sectarian" organizations "normally may be thought to have a primary effect of advancing religion" because "there is a risk that government funding, even if it is designated for specific secular purposes, may nonetheless advance the pervasively sectarian institution's 'religious mission."[4] The Court's reference to risks attendant on government funding of pervasively religious institutions was grounded in a core concern to which the First Amendment's prohibition on government establishment of religion was addressed, that the state not be allowed to utilize its taxing authority to fund religion.

The principle articulated in *Bowen v. Kendrick* remains in place. As recently as last year, a majority of the Court in *Mitchell v. Helms*[5]—two Justices who concurred in the holding allowing the loan of federally-funded computers to religious schools, joined by three dissenting Justices—reaffirmed that there are special concerns associated with the flow of government funds to pervasively religious organizations. As Justice O'Connor noted in her concurring opinion, "Our concern with direct monetary aid [to religious schools] is based on more than just [concern about] diversion [of tax-funded aid to religious use]. In fact, the most important reason for according special treatment to direct money grants is that this form of aid falls precariously close to the original object of the Establishment Clause's prohibition."[6]

And, beyond those concerns, always applicable when government funds flow to pervasively religious institutions, *"charitable choice" presents an additional problem: When institutions with a thoroughly religious environment provide social services, recipients of those services may well be coerced, either explicitly or tacitly, to take part in religious activities as a price of receiving help.* Proponents of "charitable choice"

[3] 487 U.S. 589 (1988).
[4] Id. at 610 (citations omitted).
[5] 530 U.S. 793 (2000).
[6] Id. at 856.

have pointed to several provisions usually found in the construct, as affording sufficient protection against such coercion occurring. These include prohibitions on the use of program funds for "sectarian worship, instruction or proselytization" and on discrimination against beneficiaries on the basis of religion, as well as the requirement that beneficiaries of social services shall be entitled to have those services provided by a secular agency if they so desire. But none of these "protections" are sufficient.

As to the prohibitions on use of funds for sectarian purposes and on discrimination, it is not reasonable to expect, in the context of pervasively religious institutions, a separation between the provision of secular social services for which taxpayer dollars are used and the religion-teaching activities of those organizations. Moreover, nothing in "charitable choice" precludes privately funded religious activities from taking place in and around the services paid for with public funds in a fashion that will suggest strongly to beneficiaries that these are activities in which they ought to be engaged. And, as to the requirement that there be available alternative secular providers, it is, frankly, difficult to believe that those alternative providers will always be reasonably available, if available at all, particularly in rural or homogenous areas. It is important to recall as well, with respect to these "protections" that the recipients of services provided under "charitable choice" are often *in extremis*. They may not clearly understand their options and their rights, and, even if they do so understand, they may be reluctant to take steps that might delay or obstruct their receipt of badly needed services.

These concerns were reinforced when, early this year, the press reported the statement of Administration officials that, under the President's plan, "programs funded by faith-based organizations could include religious content—such as Bible reading—so long as taxpayer money was used for lights, chairs or other nonreligious expenses,"[7] suggesting that the prohibition on the use of public funds for religious purposes was regarded as nothing more than a bookkeeping formality. Even more troubling were the reports on testimony offered at a House Government Reform subcommittee hearing on "charitable choice" held on May 23rd. At that hearing, John Castellani, executive director of Teen Challenge, a religiously infused Christian substance abuse program, is said to have stated that some Jews participating in the program returned to the Jewish faith while others had become "completed Jews," i.e., had accepted Jesus.[8] Aside from the sheer offensiveness of the suggestion that Jews who have remained true to their own faith are somehow not "complete," this testimony underlines the alarms we have raised—that, whatever the technical restrictions on their operations, pervasively religious groups receiving government funds, like Teen Challenge, will simply be unable or unwilling to disassociate their religion-teaching mission from the provision of the social services for which they are receiving government funds. There could be no clearer a violation of core constitutional concerns than for taxpayer dollars to flow to a program that includes such proselytizing.

"Charitable choice" also presents a significant potential for fostering divisiveness among various faith groups as they compete for public funding, a potential that will only be multiplied as government officials charged with determining with whom to contract or renew contracts are placed in the role of deciding which religion "works better" in dealing with the social problems to which public programs are addressed. It seems almost inevitable that, whatever claims may be made that contracts will be allocated on the basis of merit, in any given community the religious groups most likely to receive funds will be those associated with "mainstream" faiths. And, even if the contracts are allocated on a totally objective basis, there is likely to be sharp distrust and suspicion that this is not the case.

"Charitable choice" allows religious providers to make employment decisions based on religion with respect to the employees hired to provide taxpayer-funded services. Religious institutions are appropriately permitted to prefer co-religionists in hiring decisions, a limited exemption from the provisions of Title VII of the Civil Rights Act of 1964 that recognizes the powerful religious liberty interests involved. But the explicit extension of that exemption to cover employees providing publicly funded services, as part of a program premised on substantial expansion of the role of pervasively religious organizations in social services provision, runs counter to

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[7] "Bush's Limits Set on Faith-Based Plan: Religious Aspects Still Face Criticism," Washington Post, Jan. 31, 2001, p. A4

[8] "A Reference to Jews Heats Up Aid Debate," New York Times, May 25, 2001, p. A19, col. 1.

fundamental civil rights principles.[9] And H.R.7 goes even further in this problematic direction through its inclusion of a vague and broad provision—seemingly applicable even to religious organizations not eligible for the aforementioned exemption afforded by Title VII—that "a religious organization that provides assistance under [designated federal programs] . . . may, notwithstanding any other provision of law, require that its employees adhere to the religious practices of the organization." In addition, the concern that beneficiaries will feel compelled to participate in religious activities to which they are not otherwise inclined can only be heightened when government-funded social services are provided only by persons of the same faith as the religious institution operating the program.

Further, *despite its provisions intended to protect the religious character of institutions that receive funding, it is hard to see how "charitable choice" will not ultimately lead to an undermining of the distinctiveness, indeed the very mission, of religious institutions*. With government dollars comes government oversight; faith-based organizations will inevitably be held accountable for the use of the dollars they receive just as any other recipient of government funds would be. This intrusion into the affairs of churches and other pervasively religious organizations is exactly the type of entanglement of religion and state against which the Constitution guards. Moreover, if the provisions of "charitable choice" invoked by some proponents as sufficient safeguards against coercion or misuse of government funds for religious purposes are to be taken seriously, we will see a degree of entanglement of government in the affairs of the church (or the synagogue) in a fashion we have not seen before. Pervasively religious organizations will be subject to all manner of intrusive examination to ensure that the services they are providing are not "too religious" or that the funds they receive are not somehow diverted to prohibited activities.

Better Approaches

We have spoken of the paradigm that preceded "charitable choice"—provision of government-funded social services through religiously affiliated (and, of course, secular) organizations, along with other long-standing safeguards—as a preferable approach, indeed one so preferable that it can fairly be said that "charitable choice" is a solution in search of a problem. But there are other ways in which government can cooperate with religious organizations, including those which are pervasively religious, to address our pressing social needs.

On February 27, 2001, AJC and the Feinstein Center for American Jewish History at Temple University issued a landmark report, "In Good Faith: A Dialogue on Government Funding of Faith-Based Social Services," that grew out of a two-year initiative funded by the Pew Charitable Trusts aimed at finding common ground among diverse religious and public interest groups on government funding of social services provided by religious organizations. The report was initially signed by seventeen groups (others have since joined on as well), many of which had participated in the lengthy process, including organizations representing Jews, Baptists, Evangelicals, Catholics and Muslims.

While there were important areas of agreement concerning the parameters for government funding of religious organizations that provide social services, at the end the groups remained deeply divided on "charitable choice" and the report reflected that division. Nevertheless, the report pointed to nonfinancial modes of support the government can afford religious organizations, such as, among other things, providing information to the public about available programs, affording organizations access to education and training opportunities, creation of community-wide task forces, and encouraging charitable contributions through appropriate tax relief. This last approach, one supported by many groups on both sides of the "charitable

[9] In addition, allowing pervasively religious organizations to have the benefit of the Title VII exemption while receiving taxpayer funds to provide social services may have the paradoxical effect of reducing, not increasing, the autonomy of religious organizations. In deciding how to interpret the leeway in hiring and firing that present civil rights law affords religious organizations, the courts have been faced with a tension between religious liberty interests that call for broadly defining the existing exemptions and anti-discrimination concerns that incline toward interpreting that exemption narrowly. The latter interest has palpably greater weight in the context of programs that are publicly funded, lest the government appear to be subsiding discrimination. In dealing with that tension, the courts may be inclined to define narrowly the types of organizations that qualify as "religious," and therefore eligible for the Title VII exemption, and read narrowly, as well, the extent to which religious organizations may require that an employee adhere to the tenets and teachings of the faith. Thus, implementation of "charitable choice" (assuming that it is upheld as constitutional) could well lead the courts to interpret the exemption the law currently—and appropriately—grants to religious organizations more narrowly than is currently the case, with impact not only on programs for which government funding is received, but for religious organizations generally.

choice" debate, is reflected in portions of President Bush's faith-based initiative and in Title I of H.R.7.

The "In Good Faith" report also included some important points of agreement as to the considerations that should apply when government funds social services, again against the background of disagreement on "charitable choice" itself, and a discussion of how non-government community support can be provided to the work of faith-based organizations. A copy of the report is appended for your information.

Conclusion

In conclusion, there is a conceptual paradox at the heart of "charitable choice." It is an approach that seeks to allow government to utilize the spiritual ministry of churches, synagogues and other pervasively religious institutions as a tool in the provision of social services while, at the same time, assuring that the programs are administered in a fashion that protects beneficiaries of these services from religious coercion and protects religious institutions from undue interference by the state. This is an approach to social services provision that is untenable because of the practical—to say nothing of the constitutional—problems posed by any effort to reconcile these inconsistent goals. And, given all of these problems that "charitable choice" presents, the irony is that it is an approach that is simply unnecessary.

[The attachments are being retained in Committee files.]

Statement of Douglas O'Brien, Director, Public Policy and Research, America's Second Harvest, Chicago, Illinois

Chairman Herger, Chairman McCrery and distinguished members of the Ways and Means Committee, on behalf of the nation's food banks and other hunger relief charities that comprise America's Second Harvest, I am submitting written testimony for the record for the hearing on H.R. 7, the *Community Solutions Act of 2001.*

America's Second Harvest is the nation's largest private hunger relief charity and one of the largest non-profit organizations in the United States.[1] We are a national network of more than 200 regional food banks and food rescue organizations providing hunger relief and other services to 50,000 local private charities operating more than 90,000 community food assistance programs. Our network provides domestic hunger relief services in all 50 states, the District of Columbia, and Puerto Rico.

Those food banks and other non-profit charitable organizations that comprise the America's Second Harvest network provide more than 1.5 billion pounds, or 750,000 tons of food and grocery products annually, with an estimated dollar value of more than $2 billion. This food reaches approximately 25.7 million low-income Americans, including 21 million needy people at emergency feeding sites.[2] Those emergency feeding sites include church food pantries, soup kitchens and congregate meal sites for the elderly poor, and emergency shelters for the homeless, battered women and other needy people seeking short-term housing.

America's Second Harvest is a private charitable network which has emerged in nearly every American community to meet the basic food needs of the most vulnerable and needy of our neighbors. Despite the recognized efficiency and comprehensive nature of the private charitable system, we often find ourselves in a situation where requests for aid are exceeding available resources. The trend toward greater reliance on charitable food assistance has generally grown over the last decade, with most of the growth occurring over the last four years.

Nearly all of our network food banks and the local hunger relief charities they serve have experienced in recent years a startling paradox of need for hunger relief services in a time of nearly unprecedented American prosperity. Despite the generally strong economy, low-unemployment, and falling welfare and food stamp caseloads, demand for emergency food assistance has been consistently rising in most communities.

In 1998, America's Second Harvest released a comprehensive national study on the nation's charitable response to hunger and the demographic make-up of the

[1] For more information on America's Second Harvest, please see the attached fact sheet at the conclusion of the written testimony or visit our website at www.secondharvest,org.

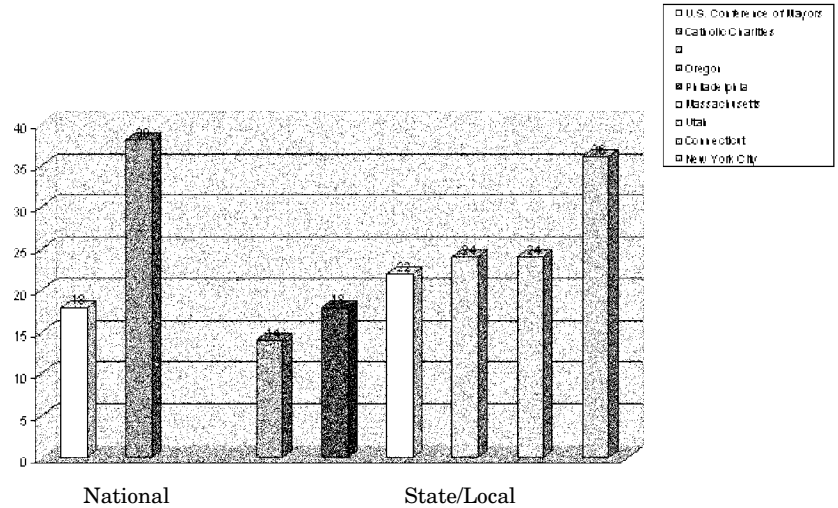
[2] The estimated dollar value of donated food and grocery products distributed by America's Second Harvest network affiliates is determined as part of our independent annual audit conducted by the accounting firm of KPMG, LLP, August 18, 2000. For more information, please see page 25 of the America's Second Harvest 2000 Annual Report: A Community Ending Hunger.

needy people we serve. Our study of more than 28,000 emergency food recipients found that 90 percent have household incomes at or below 150 percent of the poverty line, and better than one-in-ten people we serve have no income at all. The study found that children make up a substantial number of emergency food recipients, representing nearly 38 percent of all emergency food clients. Another 16 percent of emergency food recipients were elderly Americans. Furthermore, 38 percent of all households served by food banks included someone who was working and of those households, nearly half were employed full-time. Other troubling statistics also emerged from the research, including the pervasive presence of children and working single parents being served at soup kitchens.[3] Our research showed that one in five people in a soup kitchen line is now a child, a feeding site that has historically served mostly homeless, chronically unemployed adult males.

The independent research we released three years ago provides compelling supporting data to similar research conducted by the federal government, state and municipal governments, academics and non-profit research organizations on the food security status of low-income households and demand for emergency food assistance.

The most recent of these studies includes the U.S. Conference of Mayors Annual Report on Hunger and Homelessness released last December. The Mayor's study found a 17 percent increase in request in emergency food in the US cities surveyed. The number of families with children requesting food aid increased by 16 percent and one-third of adults requesting food assistance were employed.[4] For example, Figure 1, a national review of multiple studies—including various local or municipal studies of hunger relief charities to state and national studies of the same—conducted by the Tufts University, Center on Hunger and Poverty shows increased requests for food aid throughout the country ranging from a low of 14 percent to a high of 38 percent.[5]

Figure 1. Range of Reported Increases in Demand for Emergency Food Assistance: Selected Studies from 1996 through 1999



Note: These studies were conducted at different points in time using different methodologies.

[3] HUNGER 1997: The Faces & Facts, America's Second Harvest, 1998.

[4] A Status Report on Hunger and Homelessness in America's Cities 2000, U.S. Conference of Mayors, December 2000.

[5] Venner, et al., Paradox of Our Times: Hunger in a Strong Economy, Center on Hunger and Poverty, Tufts University, January 2000.

In addition, the General Accounting Office (GAO) in 1999 released a study of declining food stamp participation and stated that ". . . [*D*]*emand for food assistance by low-income families has increased in recent years . . . the need for food assistance has not diminished; rather needy individuals are relying on sources of assistance other than food stamps*."[6] The GAO's finding of needy people turning to other sources, such as charities for food assistance, is again reflected in the U.S. Department of Agriculture's annual food security study conducted as part of the Census Bureau's Current Population Survey. USDA-Census figures show that approximately 31 million Americans are food insecure, that is they are hungry or at risk of hunger, a number that has been nearly unchanged over the period 1995 through 1998, despite the strong economy and falling food assistance caseloads.[7]

Unfortunately, the growing demand for emergency food assistance has in too many instances outstripped the food resources of local charities. Our study of network food banks indicated that between 115,000 and 800,000 low-income people were denied emergency food assistance at local charities because the charity they turned to for help lacked adequate food, representing roughly 6.5 percent of all requests.[8] Similarly, the U.S. Conference of Mayors reported last year that 13 percent of requests for emergency food assistance in cities surveyed went unmet due to a lack of food resources.[9]

America's Second Harvest estimates that our network would need to increase donations by nearly 100 percent to meet local hunger relief agency needs for food distribution. According to agency surveys, our network alone experiences an annual shortfall of in-kind food donations of nearly one billion pounds.[10] This significant shortfall of food donations has led to local hunger relief charities turning away low-income people at the moment of their greatest need.

To address this shortfall in domestic hunger assistance, Congressmen Tony Hall and Richard Baker and a bipartisan group of their colleagues in the House, introduced H.R. 990, the *Good Samaritan Hunger Relief Tax Incentive Act* and Mr. Hall and Congressman J.C. Watts have included the same tax provisions in Section 103 of H.R. 7 the *Community Solutions Act of 2001* to help spur greater donations of food from the private sector. Similar legislation, S. 37, has been introduced in the Senate by Senators Richard Lugar and Patrick Leahy.

Section 103 of the *Community Solutions Act* and its identical language in the *Good Samaritan Hunger Relief Tax Incentive Act* has three provisions that when taken together, provide a greater incentive for businesses to donate food for local humanitarian purposes.

First, the legislation expands the class of taxpayers eligible for the "special rule deduction" under section 170(e)(3) of the Internal Revenue Code currently enjoyed only by regular corporations, or Chapter C Corporations, to all business taxpayers. That would include farmers, small businesses, fishermen, franchise owners, and restaurateurs. This expansion of the special rule deduction is limited to the in-kind donation of food to a 501(c)(3) charitable organization for the express purpose of hunger relief for needy people. This is an important tax equity issue. For example, under current law, if a major food company makes a donation of cheese, the corporation is eligible for the special rule deduction under section 170(e)(3). If, however, a dairy farmer made the same donation of cheese to a local hunger relief agency, the farmer is denied the deduction under current law because the farmer is not typically organized as a regular C corporation under Internal Revenue Code definitions. Figure 2 shows how the proposed change would affect a farmer, a restaurant owner, and a food manufacturer in the donation of food for hunger relief activities.

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[6] Food Stamp Program: Various Factors Have Led to Declining Participation, (Letter Report, GAO/RCED 99–185), General Accounting Office, July 2, 1999.

[7] Andrews, Margaret, et al., Household Food Security in the United states, 1999, U.S. Department of Agriculture, Economic Research Service-Food Assistance and Nutrition Research Report No. 8, fall 2000.

[8] HUNGER 1997: The Faces & Facts, p.77.

[9] U.S. Conference of Mayors, 2000

[10] HUNGER 1997: The Faces & Facts, p.82.

FIGURE 2.—ESTIMATED BENEFITS UNDER "GOOD SAMARITAN TAX ACT")

Example	Current Deduction	H.R. 7 & S. 37	Difference
Farmer donates one bushel of apples*.	No access to special deduction IRC Sec. 170(e)(s).	$5.50	+$5.50
Restaurant donates a pan of lasagna feeding 10–12 people*.	No access to special deduction IRC Sec. 170(e)(s).	$25.00	+$25.00
Grocery manufacturer donates a package of dry ice.	$0.63	$0.74	+$0.11

*In the instance of the farmer and restaurant owner in the preceding table, it is assumed that both are formed as small business, as is often, and not Regular C corporations.

The limitation of the special rule deduction of section 170(e)(3) is a significant barrier to food donations, particularly from restaurants, small businesses, and farmers. In some instances it is actually more cost effective for a farmer to dump surplus food products than to donate it to a local hunger relief charity. To struggling farmers, the act of donating can, and often does, represent a financial loss. The Section 103—of the Community Solutions Act and the Good Samaritan Hunger Relief Tax Incentive Act (H.R. 990) helps rectify that situation by allowing the grower to recoup at least some of his or her investment through the tax code.

The Section 103 provisions of H.R. 7 addresses this inequity in the code by allowing all taxpayers engaged in business or trade to be eligible for the deduction when making an in-kind donation of food.

Second, the legislation enhances the deduction from the current deduction formula to the fair market value of the product in most instances, not to exceed twice the cost or basis. For farmers and other businesses using the "cash method" of accounting, the deduction is expanded to the basis of any qualified contribution at 50 percent of the fair market value. This simplified deduction formula and enhanced deduction level provides an incentive for businesses, farmers, and fishermen to donate wholesome, edible food that might otherwise go to waste. Further, the complicated nature of the current formula sometimes precludes even large food manufacturing companies from seeking a deduction for which they are eligible when donating. By simplifying the deduction formula and enhancing the deduction's value, businesses have an incentive to donate rather than dump the surplus product.

Lastly, the legislation codifies the notion that the taxpayer, not the Internal Revenue Service, should—with substantiation of fair market value—make the determination of the value of the donated food. The issue of valuation of food inventory has been an issue of dispute between food companies and the IRS for many years. In 1995, a Federal Tax Court sided with Lucky Stores, a grocery concern, in one such dispute. The Court held that the value of surplus bread inventory donated to a local food bank by Lucky Stores and claimed at the full retail price of the bread was indeed valued by the taxpayer properly, rather than half the retail price as the IRS claimed.[11] As the nation's largest recipient of donated food from major food concerns, we especially see the codification of the Lucky Stores principle as critical to our ability to gain food donations for hungry people, and provide some level of comfort to businesses partnering with us in socially responsible ways without some future tax reprisal for their generosity. Again, this level of taxpayer protection is necessary to keep simple and effective incentives for businesses to donate surplus inventories of food for local charitable hunger relief activities.

Members of the Ways and Means Committee, the United States Department of Agriculture estimates that 96 billion pounds of edible food is wasted and dumped in landfills each year.[12] Through enactment of Section 103 of the Community Solutions Act, if even one percent of that food was re-directed from landfills to local charities instead, it would nearly double the entire food distribution throughout our network to people in need.

Section 103 of the Community Solutions Act and the Good Samaritan Hunger Relief Tax Incentive Act (H.R. 990) provides a responsible, cost-effective bottom-line incentive for America's private sector to re-direct surplus food to the hungry in their communities. It provides a win-win for farmers, small businesses, restaurants, hunger relief charities, and most importantly, to hungry Americans in need of help.

[11] Lucky Stores, Inc. v. Commissioner; (105 T.C. 420, 1995)

[12] Kantor, et al., Estimating and Addressing America's Food Losses, 1997, USDA-Economic Research Service.

Attachment 1.—Comparison of the Good Samaritan Hunger Relief Tax Incentive Act (S. 37/HR 990)

Current Law—IRC § 170(e)	S. 37/HR 990
Allows "special rule deduction" for regular corporations in the donation of in-kind gifts to charities for the care of the ill, needy, or infants.	Expands "special rule deduction" to *all* business taxpayers for in-kind donations of food inventory.
Allowable deduction = cost (basis) + ½ fair market value (FMV), not to exceed twice cost (basis).	Deduction = full FMV not to exceed 2 x cost (basis). For farmers and other taxpayers using the cash method of accounting, the basis of any qualified contribution shall be deemed at 50% of the product's FMV.
Determination of FMV of in-kind gift subject to substantiation by taxpayer of market price and other factors.	Allows business taxpayer to take FMV into account to the price the food inventory would have been sold without regard to internal standards, lack of market, or similar circumstances.

Background Narrative

Current Federal tax law. Under current law, regular corporations are allowed a "special rule deduction" under § 170(e)(3) of the Internal Revenue Code (IRC), for contributions of in-kind gifts or inventory to charities or similar non-profits provided that such contributions are used by the charity for the care of the ill, the needy, or infants and when several other statutory requirements are met. The "special rule deduction" allows a regular corporate taxpayer a deduction of cost or basis plus one half the appreciated fair market value of the property except to the extent one half of the appreciation exceeds twice the basis of the property donated. Further, the fair market value (FMV) is the price at which the property would have change hands between a willing buyer and a willing seller.

Lucky Stores, Inc. v. Commissioner (105 T.C. 420 (1995)). Lucky Stores made donations of surplus bread inventory to food banks which qualified as permissible charitable donees under IRC § 170(e)(3)(A), and claimed charitable contributions based upon the full retail prices for the bread. The Internal Revenue Service disputed claimed deductions determining that the FMV of the contributions to be approximately 50 percent of full retail prices. The Tax Court held for Lucky Stores claim of full market value and stated that § 170(e)(3) "should not be interpreted in such a restrictive way as to unnecessarily inhibit donations of the type Congress meant to encourage [in the 1976 Tax Reform Act], and certainly petitioner's bread donations are of that types."[13]

The Good Samaritan Hunger Relief Tax Incentive Act (S. 37/H.R. 990) expands the special rule deduction of § 170(e)(3) to all business tax payers (corporate and non-corporate) in regard to contributions of food, and provides a higher deduction for the donation of food inventory in order to mitigate the effect of business tax rates which typically reduce the allowable deduction below actual costs of manufacturing or producing the product. The bill also has the effect of codifying the Lucky Stores decision.

ATTACHMENT 2.—AMERICA'S SECOND HARVEST FACT SHEET

America's Second Harvest is the largest domestic hunger-relief organization in the United States. The America's Second Harvest mission is to feed hungry people by soliciting and distributing food and grocery products through a nationwide network of certified affiliate food banks and food rescue programs to educate the public about the nature of and solutions to the problem of hunger in America.

In 1999, the Chronicle of Philanthropy calculated an efficiency rating for America's Second Harvest of 99.3%. This means that 99.3% of all product and money donations received by America's Second Harvest go directly towards feeding hungry people.

Operations—The America's Second Harvest network of more than 200 regional food banks and food—rescue programs serves all 50 states and Puerto Rico by distributing food and grocery products to approximately 50,000 local charitable hunger-relief agencies, including food pantries, soup kitchens, women's shelters, Kids Cafes,

[13] Lucky Stores, Inc. v. Commissioner, (105 T.C. 420, (1995) p.435.)

Community Kitchens and other organizations that provide emergency food assistance.

Donations—America's Second Harvest works with more than 500 national grocery and food service companies (food growers, processors, manufacturers, distributors and retailers) to secure surplus food and grocery products. The list, which reads like a "Who's Who" in corporate America, includes such donors as Kraft Foods, Inc., General Mills, Inc., Nabisco, Inc., The Procter & Gamble Company, The Kellogg Company, The Pillsbury Company, ConAgra Foods, and hundreds more.

Funding—America's Second Harvest depends entirely on the support of individuals, corporations and charitable foundations. For every $1 received, America's Second Harvest distributes 30 pounds of food and grocery products to network food banks.

History—America's Second Harvest was founded in 1979. In its first year, the organization distributed 2.5 million pounds of food through a network of 13 food banks. The America's Second Harvest network now constitutes more than 200 regional food banks and food rescue programs that annually distribute 1.5 billion pounds of donated food and grocery products, providing food assistance to more than 26 million hungry Americans, including eight million children and four million seniors.

Hunger—America's Second Harvest defines hunger as the inability to purchase enough food to meet basic nutritional needs. Hunger does not discriminate on the basis of age, race or sex. It affects the elderly, the unemployed, the disabled, the homeless, the working poor and victims of natural disaster. America's Second Harvest released the most comprehensive research study on emergency food providers and recipients ever undertaken. Hunger 1997: The Faces & Facts provides thorough data and analysis on the nonprofit charitable sector's response to hunger. Key findings of this study include: of the 26 million Americans served each year by the America's Second Harvest network, 39% are from households with working individuals, 62% are female, 38% are children (17 and under), and 16% are seniors (over 65).

For More Information: To learn more about America's Second Harvest and how to help fight domestic hunger, please visit our Web site, www.secondharvest.org, or call 800–532–FOOD.

Statement of the Association of Art Museum Directors

The Statement for the Record is submitted on behalf of the Association of Art Museum Directors (AAMD). AAMD urges inclusion into H.R. 7 of H.R. 1598 the "Artists' Contribution to American Heritage Act of 2001" introduced by Representatives Amo Houghton and Ben Cardin. The Senate passed an identical companion bill (S 694) last month. The legislation will allow artists, writers and composers to take a fair-market-value deduction for works of their own creation, which they donate to an appropriate non-profit institution. As a result of the 1969 repeal of the law, artists, writers and composers now can only deduct the cost of materials should they choose to contribute a work of art to a cultural institution.

Since the 1969 repeal, many works of art, which would have been contributed to American institutions, have been sold into private collections or abroad, in effect depriving the public of these works. For example, Igor Stravkinsky planned to donate his papers to the Music Division of the Library of Congress the month the Tax Reform Act of 1969 was signed into law. Instead, the papers were sold to a private foundation in Switzerland.

The Library of Congress itself was determined to suffer the greatest loss of gifts. In the few years prior to 1969, the Library of Congress received annually about 15 to 20 large gifts of manuscripts from authors; in the four years ended 1974 it received a total of only one such gift.

A change in the law would encourage artists to make donations of their creative works to appropriate charitable institutions and also motivate charitable institutions to actively seek contributions of works from artists. The public would benefit by having important creative works available in their institutions. The benefit that would be achieved through the enrichment of charitable institutions by providing an incentive to visual artists, writers and composers to make such gifts cannot be overemphasized. Finally, by encouraging visual artists, writers and composers to donate works to appropriate public charities located in the United States, more of the cultural patrimony of the United States would be kept in the country and made accessible to the American public instead of going to foreign collectors or museums.

H.R. 1598 has been carefully structured to safeguard the American public against excessive valuation or abuse. The safeguards include:

Works of art must be created at least 18 months prior to the date of contribution by the artist.

The artist must have previously publicly sold, performed or exhibited similar works.

The artist must obtain a written appraisal of the fair-market value of the work by a qualified appraiser, and the appraisal must be attached to the artists' tax return.

The use of the work of art shall be related to the purpose of the institution that receives it. (For example, a painter could not contribute a painting to a non-profit hospital and take a fair-market-value deduction.)

The artist can only take a deduction against income earned and related to the art. (For example, a painter who earns a substantial portion of his/her income as a musician, can only deduct the fair-market value of a painting donated to a museum, from the income earned from painting or a related activity, such as teaching art, but not from the income earned as a musician.)

The artist can only take a deduction against the income earned in the year the gift is made.

Important regional, ethnic or culturally specific institutions cannot ask artists doing significant work in an area important to the collections of their institutions to donate works of art. Most artists earn very little and cannot afford to donate. And museums, libraries and archives, in most instances, do not have funds to acquire such works; they must rely on donations. As a result, they are losing works important to their public.

H.R. 7 the "Community Solutions Act of 2001" is an appropriate vehicle to include H.R. 1598 the "Artists' Contribution to American Heritage Act of 2001" since it already includes several important bills offering tax incentives to increase charitable giving. The inclusion of H.R.1598 extends to America's cultural institutions the possibility of significant contributions from living artists at very modest cost.

The Joint Committee on Taxation, in a letter received by Representative Houghton on May 23, 2001, estimates that the cost of H.R. 1598 will be $50 million over 10 years. The gain to the nation will be inestimable.

We urge you to include H.R. 1598 in the "Community Solutions Act of 2001".

We thank you for your kind consideration.

Statement of Leo J. O'Donovan, President, Georgetown University

Chairmen Herger and McCrery. Please allow me to thank you and the Committee for convening this hearing as the Congress considers H. R. 7, the Community Solutions Act of 2001, and related legislation. Your consideration of legislative proposals designed to encourage charitable giving is very important at this particular juncture. I know that the Congress is working to achieve a balance between direct government support and reliance on non-governmental organizations, including universities like Georgetown, to meet compelling societal needs. Inclusion of the provisions of H. R. 774, the Crane-Neal Charitable IRA Rollover Act, in the next piece of tax legislation to be reported by the Ways and Means Committee is a key component in reaching the right balance. This legislation is very important to Georgetown University and other institutions of higher education because it will assist us in securing maximum private support to sustain educational excellence and accessibility.

Current tax law discourages prospective donors from making "indirect" or "planned" gifts from their IRA's to non-profit organizations, like colleges and universities that promote the common good. That is the case because, in moving funds from an IRA to a charitable remainder trust, a taxpayer is subjected to ordinary income tax on the bulk of his or her IRA withdrawal despite the fact that a charitable gift is being made. That clearly is not consistent with other aspects of tax policy, which are designed to provide incentives for charitable giving.

Please allow me to emphasize that prospective donors often are most interested in making gifts through such indirect, planned arrangements. In fact, using the planned giving approach to these conversions enables donors to make charitable gifts while maintaining access to their IRA resources for the remainder of one's life and that of the spouse. By allowing this innovative form of charitable giving without negative tax consequences, the intended purpose of the IRA would be preserved and any withdrawals for other purposes, of course, would be subject to taxation, as is currently the case.

I can tell you that planned gifts are a critical component of Georgetown's efforts to strengthen our endowment. At Georgetown, and generally throughout the charitable community, planned gifts typically represent about 40% of the total charitable gifts received from individual donors. Furthermore, I can testify to the fact that the current state of the tax code in this regard has most definitely prevented significant contributions that otherwise would have come to our University. While it would be impossible to provide the Subcommittee a precise amount of contributions that has been put in abeyance or lost outright because of the current tax treatment of such conversions, I can say with considerable certainty that several million dollars in planned giving donations, possibly reaching as high as $10 million, could realistically be anticipated in the case of Georgetown University alone in the first year of this change taking effect. Unleashing the giving potential of our prospective donors would be of tremendous help as we work to strengthen academic quality at Georgetown and to maintain our commitment to need-based, full-need financial aid. It would similarly help other colleges, universities, schools and communities across the nation.

In closing, let me say that I was pleased that the Senate incorporated provisions based on H. R. 774 and its Senate counterpart, S. 205 in its version of the tax legislation adopted by the Congress last month. Unfortunately, in the process of working to fit the Senate tax legislation into the framework of the budget resolution, the provisions concerning Charitable IRA Rollover opportunities were back loaded to take effect in 2010. Of course, subsequently, this was one of the provisions that were dropped from the bill in the House-Senate conference. That was very disappointing to those of us who understand what a tremendous difference this legislation can make in terms of encouraging charitable giving. As the House shifts its attention to other tax legislation specifically focused on charitable giving, I strongly encourage members of the Ways and Means Committee to approve this important reform effective immediately. While the Senate's policy in this regard was absolutely on target, the delay in its implementation no doubt would have resulted in the holding back of much-needed financial support for universities and other charitable entities. As this Committee moves legislation designed to enhance charitable giving, I encourage you to do the right thing, incorporate the provisions of H. R. 774 in their entirety in the next tax bill and make them effective immediately.

I appreciate the work of these Subcommittees and having this opportunity to make the case for the immediate adoption of the Charitable IRA Rollover proposal introduced by Representatives Crane and Neal. Thank you for your consideration.

Statement of Dan Kostenbauder, General Tax Counsel, Hewlett-Packard Company, Palo Alto, California

Hewlett-Packard Company commends Chairman Herger and Chairman McCrery for holding hearings on a bill that would encourage charitable contributions by businesses and individuals.

HP submits this testimony to urge the repeal of section 170(e)(4)(C) of the Internal Revenue Code. Section 170(e)(4)(C) limits the incentives of sections 170(e)(4) and (e)(6) to products "constructed" by the taxpayer. Section 170(e)(4)(C) should be repealed because:

* Section 170(e)(4)(C) serves no policy objective and is inconsistent with the Congressional goal of encouraging taxpayers to donate computers and other scientific equipment to schools and universities;
* The "constructed by the taxpayer" requirement imposes significant administrative burdens of taxpayers without any useful purpose;
* Section 170(e)(4)(C), when applied to 170(e)(6), places greater limits on new equipment than on used equipment; and
* Section 170(e)(4)(C), when applied to 170(e)(6), imposes unfair burdens on donations to public schools.

Background

HP is a leading global provider of computing and imaging solutions and services for business and home, and is focused on capitalizing on the opportunities of the Internet and the emergence of next-generation appliances, e-services and infrastructure. During its fiscal year ending in October 2000, HP had net revenue of almost $49 billion.

Good citizenship is one of HP's seven corporate objectives. One avenue for achieving this objective is corporate philanthropy. Following in the footsteps of our founders, Dave Packard and Bill Hewlett, HP has given significantly to philanthropic

causes, particularly U.S. universities. For example, last year HP made charitable contributions of almost $52 million worldwide, with over $29 million in the United States.

Congress has encouraged philanthropy by allowing charitable contribution deductions against income and other taxes. Over the years, Congress has identified three particular areas where it provides certain donors an enhanced tax deduction (cost plus one-half of gross profit, limited to two times cost). The three areas relate to care of the ill, needy and infants (section 170(e)(3) adopted in 1976), scientific equipment for US universities (section 170(e)(4) adopted in 1981), and PC's for K–12 (section 170(e)(6) adopted in 1997).

To be eligible for the incentives under sections 170(e)(4) relating to contributions of scientific equipment to US universities, subparagraph 170(e)(4)(B)(ii) requires that scientific equipment or apparatus donated by a corporation must be "constructed" by the taxpayer. To be eligible for the incentives under sections 170(e)(6) relating to the special rule for contributions of computer technology for elementary or secondary school purposes, section 170(e)(6)(D) provides that the "constructed by the taxpayer" requirement of 170(e)(4)(C) must be satisfied.

Section 170(e)(4)(C) provides as follows:

> (C) CONSTRUCTION OF PROPERTY BY TAXPAYER.—For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

Section 170(e)(4)(C) should be repealed because it serves no useful policy objective while imposing tremendous administrative and compliance burdens on taxpayers that respond to the incentives under section 170(e)(4) and 170(e)(6).

Section 170(e)(4)(C) serves no policy objective

Section 170(e)(4)(C) serves no useful policy objective. The objective of both section 170(e)(4) and 170(e)(6) is to encourage modern scientific and computer equipment to be donated to U.S. schools. There is no need to limit such incentives to companies that "construct" equipment within this peculiar definition. Sections 170(e)(4) and (6) have other provisions that ensure that the only eligible property is new inventory used first by the donee.

Furthermore, an overly restrictive reading of the requirements of section 170(e)(4)(C) could lead to the conclusion that almost no scientific or computer equipment is "constructed" by anyone. This is because today's sophisticated equipment and computers are full of integrated circuits, circuit boards, and other components that are purchased from a wide variety of suppliers. If these were all considered "parts" for purposes of section 170(e)(4)(C), it is possible that their value would exceed 50% of the taxpayer's basis (manufacturing cost) of the product. Since most manufacturers of computers, in particular, buy their computer chips and other components (hard drives, monitors, keyboards, memory, floppy drives, CD-drives, etc.) from the same group of unrelated suppliers, it is conceivable that no manufacturer of computers would qualify as constructing computers under the definition set forth in 170(e)(4)(C).

The legislative history of sections 170(e)(4) and 170(e)(6) provides no explanation whatsoever for the inclusion of the "constructed by the taxpayer" requirement. See Ways and Means Committee Report, p.120, and Senate Finance Committee Report, p. 140, on the Economic Recovery Tax Act of 1981, and Ways and Means Committee Report, p. 38, Conference Committee Report, pp. pp373–374 on H.R.2014 (1997).

Section 170(e)(4)(C) imposes inordinate administrative burdens

In addition to having no identifiable policy objective, section 170(e)(4)(C) imposes inordinate administrative and compliance burdens on taxpayers. These burdens can be demonstrated by reference to HP's procedures for complying with section 170(e)(4)(C).

During any year, HP donates at least one unit of hundreds of different models of scientific equipment or computers that would otherwise be eligible for the enhanced deductions under sections 170(e)(4) or (6). This means that for each of these hundreds of models, HP needs to determine whether it has "constructed" the model for purposes of 170(e)(4)(C) before it can claim the enhanced deduction under sections 170(e)(4) or (e)(6). To do this, HP must create a list of each of these different models that has been donated during the year, separated by the division that supplies each of these products (PC's, printers, scanners, servers, etc.). This list is then distributed by the HP tax department to the controllers of each of those divisions. This request is distributed so broadly because the detailed cost data required to perform the analysis for purposes of 170(e)(4)(C) is not available centrally. The request

for this information is accompanied by instructions about how to determine whether or not a product is "constructed" within the meaning of 170(e)(4)(C). The controllers then forward this request to the appropriate financial staff, usually cost accountants, who then do a detailed analysis of each product. Since the rules for doing this computation are unfamiliar to the individuals doing this analysis, there are often questions to be answered by HP's tax department. There is always a need for regular follow-up to ensure that all product divisions complete their responses in a timely way. When the analysis is complete, it is transferred to the HP Corporate Philanthropy department, which enters all models that do not qualify in a table located within a computer program for computing the enhanced tax deductions under section 170(e)(3), (4), and (6). As the enhanced deduction is computed for each product, there is a query from the system to the table to determine whether or not a product is disqualified from the enhanced deduction because it fails to satisfy the requirements of 170(e)(4)(C). In addition, the background material developed for this effort must be retained in a special fashion. This is because there is no routine business need to keep the detailed cost data needed to make the section 170(e)(4)(C) analysis as long as could be necessary in the event that the Internal Revenue Service requires it for purposes of their audit of HP, which covers every year. This process is extremely time-consuming and complex. Corresponding audit burdens are also placed on the IRS by section 170(e)(4)(C).

In addition to its extremely factual nature, making a valid assessment of whether a product qualifies under section 170(e)(4)(C) is made more difficult because no regulations have ever been issued with regard to this provision, even though it was enacted in 1981. Some of the inherent difficulties of applying section 170(e)(4)(C) relate to the fact that a number of its terms are not widely used elsewhere in the Internal Revenue Code.

Of critical importance is the meaning of the word "parts." In the context of high-tech electronic equipment and computers, however, it is not nearly as clear as one might think. For example, many of the purchases that a computer manufacturer makes in order to build a computer might be called: components, assemblies, subassemblies, boards, integrated circuits, motherboards, memory boards, memory modules, floppy disk drives, hard drives, CD-drives, CD-writers, keyboards, monitors, batteries, cables, etc. In common parlance, these might all be called "parts." If they were all treated as "parts" for purposes of section 170(e)(4)(C), however, then it might be argued that there in no company on the planet that "constructs" computers within the meaning of that section. Such a result would clearly be inconsistent with the intent of Congress to provide an incentive for donations of high-tech equipment and PC's to the US educational system, from kindergarten through universities. This lack of clarity as to the meaning of "parts" adds to the administrative and compliance burden on taxpayers in their effort to ensure that they satisfy the requirements of section 170(e)(4)(C).

There are several other challenges in interpreting section 170(e)(4)(C). It treats parts purchased from "related parties" in a favorable way. It is not clear exactly which suppliers would be considered "related parties" for this purpose. Also, it is not clear whether a finished product purchased from a related party would qualify as "constructed" by the taxpayer. If all of the parts were purchased from the related party by the taxpayer and assembled, they would meet the test. Why should the test not be satisfied if the finished product is purchased from the taxpayer? The other question inherent in any effort to apply the "constructed by the taxpayer" test under section 170(e)(4)(C) is the degree to which "parts" purchased by one operation of a taxpayer and processed further and then passed on to still another operation of the taxpayer must be traced back to the original purchase from an unrelated party. An expansive tracing requirement would magnify the administrative effort described above immensely.

Section 170(e)(4)(C), when applied to 170(e)(6), places greater limits on new equipment than on used equipment

Section 170(e)(6)(D) provides that the rules of section 170(e)(4)(C) apply to section 170(e)(6). This requirement should be eliminated from Section 170(e)(6) because it both limits and complicates the incentive. Section 170(e)(6) applies not only to property constructed by the donor, but also to inventory acquired for resale and property used in a donor's business. However, the requirements of section 170(e)(4)(C) apply only in the case of new inventory supplied by the manufacturer, and not to used computers purchased from a manufacturer. There is no policy rationale that would justify imposing a more onerous substantive and administrative requirement on donations of new, as opposed to used, computers.

Donations to public schools are treated unfairly

Section 170(e)(6)(D) provides that the rules of section 170(e)(4)(C) apply to section 170(e)(6). Therefore, the burden of complying with section 170(e)(4)(C) clearly applies to the incentives under for section 170(e)(6). The burden, however, would only apply to donations to public schools at the K–12 level. This is because donations to private schools could be eligible for an equivalent enhanced deduction under section 170(e)(3), relating to the care of the ill, needy and infants, which does not have the "constructed by the taxpayer" requirement. See, for example, LTR 9528022.

Sections 170(e)(4)(B)(ii) and 170(e)(6)(D) should be repealed as conforming amendments

If section 170(e)(4)(C) is repealed, then sections 170(e)(4)(B)(ii) and 170(e)(6)(D) should also be repealed, since they are the two provisions that impose the requirements of section 170(e)(4)(C) on 170(e)(4) and (6) contributions, respectively.

Conclusion

Hewlett-Packard Company greatly appreciates the opportunity to offer its views on this matter and is available to provide further information or to answer such questions as Members of the Committee may have.

Statement of Joint Venture: Silicon Valley Network, San Jose, California

Our comments are divided into two categories:

1) Technical Corrections, and
2) Enhancements.

Technical Corrections

We recommend the following four changes:

1. *Clarify terminology*: IRC Section 170(e)(6) uses the following terms to refer to the donee: "educational organization," "entity," and "donee." Use of multiple words could lead to confusion in applying the requirements for an enhanced deduction at IRC Section 170(e)(6)(B)(i) to (vii). For example, Section 170(e)(6)(B)(i) provides that donations must be made to either "(I) an *educational organization*" or "(II) an *entity* described in section 501(c)(3)." IRC Section 170(e)(6)(B)(vii) states that the "entity's use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v)." "Entity" is also used at IRC Section 170(e)(6)(B)(vi) with reference to the "entity's education plan." Other requirements at IRC Section 170(e)(6), such as (iii) and (v), use the term "donee" rather than "entity." And, (iv) refers to "organization or entity." Thus, while it would seem that the requirements at (B)(i) through (vii) should be met with respect to a contribution to either an educational organization or a Section 501(c)(3) entity, a literal reading of the requirements indicates that some only apply if the donee is a Section 501(c)(3) entity.

Recommendation: Clarify that requirements (ii) through (vii) at IRC Section 170(e)(6)(B) apply whether the donee is an educational organization or a Section 501(c)(3) entity. This clarification could be made by only using the term "donee" at (iii) through (vii), and adding a definition of "donee" at Section 170(e)(6)(E), which could read: "As used in paragraph (6)(B), the term "donee" means an organization described at paragraph (e)(6)(B)(i)(I) or (II)."

2. *Split Section 170(e)(6)(B)(v) into two separate requirements*: IRC Section 170(e)(6)(B)(v) states: "the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs." This provision is difficult to understand. The problem stems from the fact that it combines two separate requirements when it would be easier to understand if they were separated.

The first part—"the property is not transferred by the donee in exchange for money, other property, or services"—is similar to language used in the other enhanced deduction provisions at Section 170(e)(3)(A)(ii) and Section 170(e)(4)(B)(vi). The second part—"except for shipping, installation and transfer costs"—comes from the legislative history to the Taxpayer Relief Act of 1997. Per the House Committee Report: "The bill permits payment by the donee organization of shipping, transfer, and installation costs."

Recommendation: Split Section 170(e)(6)(B)(v) into two requirements as follows (and renumber the requirements to be (i) through (viii)):

(v) the property is not transferred by the donee in exchange for money, other property, or services,

(vi) no payment is made by the donee to the donor (although it is permissible for the donee to pay shipping, transfer, and installation costs),

3. *Clarify that refurbished property is qualified property*: IRC Section 170(e)(6) requires that the property be acquired or constructed by the donor, and that the original use of the property be with either the donor or donee. These requirements may exclude property refurbished by the taxpayer. For example, a potential donor (such as a manufacturer or retailer) may sell a computer only to have it returned because the customer wanted a different model or features, or the equipment had a defect. The potential donor can upgrade, repair, or modify the equipment and then sell it or donate it. Likewise, a manufacturer or retailer may accept trade-ins of equipment, which are then refurbished to new standards and then sold or donated. However, because the original use was with the customer, even though it has been restored to new by the potential donor, the donor will not obtain an enhanced deduction. Given that Section 170(e)(6) is not limited to donations of new equipment, but also applies to used equipment (provided it is donated within two years of acquisition), the terms "constructed" and "original use" should be clarified to ensure that the provision also applies to refurbished equipment (which is likely to be better quality and newer than "used" equipment). There should be no concern that this clarification will result in donations of out-dated refurbished equipment because the fair market value of such equipment is likely to be lower than its basis and thus, would not qualify for an enhanced deduction (the deduction would be limited to the lower fair market value).

Recommendation: The following definition should be added at IRC Section 170(e)(6)(E): "For purposes of this paragraph, refurbished property is treated as newly acquired or newly constructed by the taxpayer." This clarification addresses the "original use" requirement of Section 170(e)(6)(B)(iii) by treating refurbished property as originally used by the donee, as well as the "two-year" requirement of Section 170(e)(6)(B)(ii) by treating refurbished property as newly acquired or constructed.

Committee report language could indicate that such refurbished equipment must have a manufacturer's warranty or be regularly sold by the manufacturer in order to be treated as newly acquired or constructed property and therefore, qualify for the enhanced deduction.

4. *The requirement for manufacturers should not be stricter than for other donors*: IRC Section 170(e)(6)(D) provides that the rules of Section 170(e)(4)(C) apply to Section 170(e)(6). Under Section 170(e)(4)(C) property is treated as constructed by the taxpayer only if the cost of the parts used in its construction (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in the property. This requirement should be eliminated from Section 170(e)(6) because it both limits and complicates the incentive. Determining whether a manufacturer has "constructed" a PC within the meaning of Section 170(e)(4)(C) is time consuming and challenging because of the lack of regulations specifying the exact meaning of some of the terms needed to perform this analysis.

More importantly, the enhanced deduction provision of Section 170(e)(4) (contributions of scientific property used for research) only applies to property constructed by the taxpayer. However, Section 170(e)(6) applies not only to property constructed by the donor, but also to inventory acquired for resale and property used in a donor's business. Thus, the special rule for constructed property has no relevance to the objectives of new Section 170(e)(6) and will unnecessarily limit the number of donations. Furthermore, it seems quite anomalous to require new PC's of a manufacturer to meet the "constructed by the taxpayer" test of Section 170(e)(4)(C), while purchased or used PC's would not need to meet this requirement.

Recommendation: Repeal IRC Section 170(e)(6)(D).

Enhancements

The goals of encouraging donations of technology to schools and helping students obtain access to technology in the classroom could be further enhanced with the following two changes to IRC Section 170(e)(6).

1. *Send a permanent message*: School needs for technology will be permanent ones. Schools will continue to need state-of-the-art equipment and thus, will always be seeking donations. Because the needs to be addressed by the enactment of Section 170(e)(6) are not temporary ones, the provision should be made permanent. This would also be appropriate given the fact that the other enhanced charitable deduction provisions at IRC Section 170(e)(3) and (e)(4) are permanent provisions.

Recommendation: Eliminate IRC Section 170(e)(6)(F) to make this incentive provision a permanent one.

2. *Include community colleges as eligible donees*: The needs and mission of community colleges are similar enough to those of grades K to 12 to warrant extending IRC Section 170(e)(6) to include technology donations made to such institutions. For example, in California, K to 12 is "responsible for academic and general vocational instruction" including preparing students for postsecondary instruction. The mission of the California community colleges is similar. Their "primary mission" is to "offer academic and vocational instruction at the lower division level," including offering support to help students succeed at the postsecondary level. On the other hand, the California state university system's goal is to offer undergraduate and graduate instruction.[1]

Recommendation: Following "grades K–12" at IRC Section 170(e)(6)(B)(iv) add, "or community college." A similar change should be made to the title of Section 170(e)(6). A community college should be defined as an educational organization that does not offer Bachelor's or graduate degrees.

Joint Venture's Tax Policy Group's Position on Technical Corrections and Enhancements to IRC Section 170(e)(6)

Position

The addition of Section 170(e)(6) to the tax law in 1997 was welcome because it helps schools obtain necessary technology for instruction despite their limited resources. Joint Venture: Silicon Valley Network's Tax Policy Group suggests some technical corrections and enhancements to clarify the provision and further promote its objectives. Specifically, we recommend that:

1. The term "donee" be used throughout Section 170(e)(6), rather than also "entity" and "educational organization;"
2. Section 170(e)(6)(B)(v) be split into two requirements;
3. Clarification be made that eligible property includes refurbished property;
4. Section 170(e)(6)(D) be repealed so that a tougher standard does not apply to manufacturers than to others donating identical equipment by requiring only manufacturers to meet the qualifications of section 170(e)(4)(C);
5. The incentive be made permanent; and
6. The incentive be expanded to include donations to community colleges.

Why this issue is important to Joint Venture's Council on Tax and Fiscal Policy

Joint Venture is a collaboration of public and private sectors. We view the public-private partnership approach of new Section 170(e)(6) as meeting an important need in assisting schools obtain necessary technology. For example, Joint Venture directs the 21st Century Education Initiative whose mission is to spark a local educational renaissance—a new community commitment to build a world-class educational system that enables all students in Silicon Valley to be successful, productive citizens in the 21st century. As part of this program, we support the objectives of Section 170(e)(6) and want to work with members of Congress to ensure that the provision is understandable by schools and corporate donors, and available to all potential corporate donors with current technology to donate.

More information

The attached paper explains our specific comments and recommendations.

Joint Venture: Silicon Valley Network (www.jointventure.org) is a non-profit dynamic model for regional rejuvenation. Its vision is to build a sustainable community collaborating to compete globally. Joint Venture brings people together from business, government, education, and the community to identify and act on regional issues affecting economic vitality and quality of life.

Joint Venture's Tax Policy Group consists of individuals from high tech industry, government, and academia who analyze various state and federal tax rules and proposals to consider the impact to local governments and high tech industries. The Group's current work encompasses international tax reform, worker classification, R&D incentives, major federal tax reform, incentives for donations of technology to K–14, and sales tax issues of electronic commerce. The Group works to promote better understanding of tax and fiscal issues of significance to the Silicon Valley economy, through distribution of its reports and quarterly Tax and Fiscal Newsletter, sponsorship of seminars and discussion forums, and submission of testimony to legislators and tax administrators.

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[1] California Education Code Sections 6610.3 and 6610.4

Statement of Harry L. Gutman, JSY Foundation

I appreciate the opportunity to submit a statement for the record on behalf of the JSY Foundation in connection with the Subcommittees' examination of H.R.7, the Community Solutions Act of 2001.

H.R.7 is designed in part "to provide incentives for charitable contributions by individuals . . . [and] to improve the effectiveness and efficiency of government program delivery to individuals and families in need." In this statement I address three additional items that, if adopted, would further the objectives of H.R.7. The three items are:

1. Permit a fair market value deduction for charitable contributions of marketable securities to private foundations;
2. Accord "public charity" status to certain medical research organizations whose principal purpose is the support and coordination of research into rare/orphan diseases; and
3. Repeal or extend the five year limitation period on the carryforward of excess annual charitable contributions.

I. Permit a fair market value deduction for charitable contributions of marketable securities to private foundations.

PROBLEM

Section 170(e)(5) of the Internal Revenue Code ("the Code"), in general, permits a fair market value deduction for contributions to a private foundation of stock of a corporation for which, as of the date of the contribution, (1) market quotations are readily available on an established securities market or from at least 5 dealers, and (2) the donor would have realized long-term capital gain had the stock been sold for fair market value. The Code, however, does not permit a full fair market value deduction for contributions to private foundations of securities other than stock, even if the contributed securities are regularly traded on an established market.

PROPOSAL

To encourage additional charitable contributions to private foundations, section 170(e)(5) should be amended to include securities for which, as of the date of the contribution, (1) market quotations are readily available on an established securities market or from at least five dealers, and (2) the donor would have realized long-term capital gain had the securities been sold for fair market value.

ANALYSIS

Section 301 of the Deficit Reduction Act of 1984 added Code section 170(e)(5). Prior to enactment of paragraph (5), section 170(e) generally limited the deduction for contributions of appreciated capital assets to private foundations to adjusted basis. Section 170(e)(5) was enacted "to encourage donations to charitable private foundations." *E.g.*, S. Rep. No. 104–281, at 43 (1996), *reprinted in* 1996 U.S.C.C.A.N. 1474, 1517; H.R. Rep. No. 105–148, at 370 (1997), *reprinted in* 1997 U.S.C.C.A.N. 678, 764. The market quotation requirement was intended to limit deductibility to "situations in which the potential for abuse, including overvaluation, is minimized." H.R. Rep. No. 98–432, pt. 2, at 1464 (1984), *reprinted in* 1984 U.S.C.C.A.N. 697, 1107.

The legislative history of section 170(e)(5) does not provide any reason why the provision was limited to corporate stock. Given the expressed congressional intent to encourage donations to private charitable foundations, the provision should be expanded to include other actively traded securities (such as U.S. Treasury and agency issuances) securities, so long as there is no opportunity for valuation abuse.

II. Accord "public charity" status to certain medical research organizations whose principal purpose is the support and coordination of research into rare/orphan diseases.

PROBLEM

Section 170(b)(1) of the Code limits the deduction for charitable contributions to 50 percent of the donor's contribution base in the case of "public" charities and certain private foundations described in section 170(b)(1)(A) and to 30 percent of the donor's contribution base in the case of other private foundations.

The 50 percent contribution limitation applies with respect to contributions to a "medical research organization *directly engaged in the continuous active conduct of medical research in conjunction with a hospital*, and during the calendar year in which the contribution is made *such organization is committed to spend such contribution for such research before January 1 of the fifth calendar year which begins after the date such contribution is made*." Section 170(b)(1)(A)(iii). (emphasis added.) The 50 percent limitation also applies with respect to contributions to an organization "which normally receives a substantial part of its support . . . from direct or indirect contributions from the general public." Section 170(b)(1)(A)(ii). Finally, the 50 percent limitation applies to contributions to "private operating foundations." Section 170(b)(1)(A)(vii).

Certain organizations whose principal purpose is the support and coordination of research into rare/orphan diseases may fail to meet the technical requirements for qualification under sections 170(b)(1)(A)(iii), (vi) and (vii), because (1) their research is primarily conducted indirectly, (2) a substantial portion of the contributions they receive comes from one or a small number of donors, or (3) the research cannot realistically be conducted by the organization itself.

PROPOSAL

To encourage efficient research into rare/orphan diseases, section 170(b)(1)(A)(iii) should be amended to include organizations whose principal purpose is to directly or *indirectly* engage in the continuous active conduct of medical research into rare/orphan diseases, as defined in section 45C(d)(1), without regard to the five year expenditure rule.

ANALYSIS

Individuals are most likely to make charitable contributions in support of medical research if they, a family member, or a friend has suffered from the disease or condition that will be the subject of the research. Thus, research into diseases that strike large numbers of people is typically better funded, by a broader range of contributors, than so-called "rare/orphan diseases." This limited donor base creates both practical and tax barriers to effective research into rare/orphan diseases.

In part as a result of fewer research dollars being available, fewer researchers are exclusively involved in the study of a particular rare/orphan disease. Further, the few researchers who are at least partially involved are more likely to be scattered among a number of hospitals or other institutions, rather than gathered together at a single institution. The disease being researched is not usually sufficiently common to warrant a specialty practice within any given hospital.

Effective coordination of research activities into rare/orphan diseases requires a "virtual institution" to direct the work being done in various places. Current income tax rules discourage the creation of such "virtual institutions" because the 50 percent charitable contribution limitation is available under section 170(b)(1)(A)(iii) only where research is done directly, in the MRO's or hospital's own designated facilities. The "virtual institution", by its nature, must reach across a number of hospitals and institutions to conduct, coordinate and consolidate the necessary research. This practical reality should be recognized and the beneficial treatment accorded other medical research organizations extended to virtual research institutions as well.

The fact that there are many fewer contributors to research into a particular rare/orphan disease than contributors to research into more common conditions also means that any individual contributor is more likely to represent a significant percentage of the funds contributed for such research. Consequently, the organizations funding this research cannot usually qualify for the increased contribution limitation as publicly supported charities.

The proposal accommodates the policy objective of providing realistically targeted incentives to conduct effective, efficiently supervised and funded research into rare/orphan diseases. However, one additional feature of existing law must also be changed to reflect the reality of rare/orphan disease research. Under current law, medical research organizations must be committed to spending 3.5% of assets annually plus all contributions within five years. Expenditures to fund effective rare/orphan disease research do not fit neatly into limited time periods. Research progresses erratically and the largest expenses, high throughput screens and drug trials, take place late in the process, many years after the initial experiments. While it may be the case that a five year expenditure requirement does not alter the research agenda in some cases, in most cases it surely will. In any event, there is little perceived danger in permitting a rare/orphan disease research organization to determine the most effective expenditure schedule for its contributions, so long as they

are ultimately used for that purpose. Thus, the proposal includes a provision that would eliminate the five year expenditure requirement in the case of "virtual" medical research organizations.

III. Repeal or extend the five year limitation period on the carryforward of excess annual charitable contributions

PROBLEM

Section 170(d)(1)(A) provides that contributions to charities described in section 170(b)(1)(A) ["public charities"] in excess of 50 percent of the tax payer's contribution base may be carried over to each of the five succeeding taxable years pursuant to a specified ordering rule. The five year carryforward limitation has the effect of disallowing charitable contribution deductions in some cases, despite the fact that the charity has received the total contributed amount.

PROPOSAL

Repeal or extend the section 170(d)(1)(A) five year limitation period.

ANALYSIS

The five year carryover period was enacted as part of the Revenue Act of 1964. Prior to its enactment, charitable contributions that exceeded the annual limit were wasted (while excess corporate contributions could be carried over to future years). The 1964 Act created a carryover provision for excess individual charitable contributions in part to put individuals in parity with corporations but, in the words of the Senate Finance Committee:

> More important, however, this will make it unnecessary for taxpayers desiring to make contribution of a substantial nature to a charitable organization to carefully divide the gift into parts, contributing each in a separate year, or perhaps giving undivided interests in a property, up to their applicable limitation, to the charitable organization in each of a series of years. Not only is the present practice complicated for the donor but it also creates problems for the charitable or educational organization. Where they are given undivided interests in a property over an extended period of time, they may find it impossible either to sell or to use the property over this same period of time while their interest in it gradually increases from year to year. S. Rep. No. 88–830, at 61 (1964), *reprinted in* 1964 U.S.C.C.A.N. 1673, 1733–34.

Similar problems continue to exist today, particularly with respect to gifts of appreciated property as to which a donor cannot bifurcate the contribution without risking future loss of value. More fundamentally, there can be no objection in principle to an unlimited carryover. After all, the charity has received the property. Administrative concerns may dictate some limit on the carryover period, but there is no reason to confine it to five years.

Statement of Marina L. Weiss, Senior Vice President, Public Policy and Government Affairs, March of Dimes

INCENTIVES FOR CHARITABLE GIVING WILL SPUR RESEARCH AND COMMUNITY-BASED ACTIVITIES TO IMPROVE BIRTH OUTCOMES

The 3 million volunteers and 1600 staff members of the March of Dimes strongly support providing tax incentives to promote charitable giving. The proposals to allow non-itemizers to deduct charitable contributions and to permit tax-free withdrawals from individual retirement accounts (IRAs) for charitable contributions will encourage new contributors to support worthwhile programs and also reward those who already give.

Of particular interest to the March of Dimes is the non-itemizer deduction. According to a January 2001 PricewaterhouseCoopers report, extending the charitable deduction to the nearly 85 million individuals who do not currently itemize their tax returns would provide an incentive for new donations of up to $14.6 billion in the first year and more than $80 billion over 5 years. The report also projects that this change in the tax laws would induce more than 11.7 million new donors to contribute.

The non-itemizer charitable deduction would also benefit current donors. For example, the median household income of donors to the March of Dimes largest fund-

raising event, WalkAmerica, is $45,900 and more than 1.1 million direct mail donors to the Foundation have incomes of less than $50,000. It is interesting to note that the average annual donation to the March of Dimes is $20. Clearly, enactment of a bill that extends the charitable deduction to non-itemizers will bring greater equity to the code and ensure that all taxpayers benefit from favorable tax treatment of their donations.

If enacted, these proposals would benefit the March of Dimes and other charities who rely on small donations, by creating incentives for current donors and generating millions of new donors. The donations stimulated by these changes in the tax code would provide increased resources for expanding the Foundation's investment in cutting-edge research, widening the distribution of education materials aimed at preventing birth defects and infant mortality, and increasing support of community-based programs to improve birth outcomes.

The March of Dimes strongly urges the Committee to approve these needed changes to the tax code this year. Extending the charitable deduction to non-itemizers and allowing tax-free withdrawals from IRAs for charitable giving are proposals that have broad bipartisan support in Congress and have been endorsed by the President. March of Dimes staff and volunteers across the country stand ready to work with you to secure final passage of these important proposals.

For more information contact Marina L. Weiss or Emil Wigode, March of Dimes Office of Government Affairs at (202) 659–1800.

Founded in 1938 by President Franklin Delano Roosevelt, the March of Dimes is a national voluntary health agency whose mission is to improve the health of infants and children by preventing birth defects and infant mortality.

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